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## The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED IN 1857.)

LONDON, JUNE 16, 1917.

ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:

£1 6s.; by Post, £1 8s.; Foreign, £1 10s. 4d.

HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

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### Current Topics.

#### The New Courts (Emergency Powers) Bill.

WE NOTICED (*ante*, p. 294) the provisions of the new Courts (Emergency Powers) Bill when it was introduced in the House of Commons. It has now passed through the Committee stage in the House of Lords, and is fixed for consideration on Report next Tuesday. It contains clauses which provide for the suspension or annulment of pre-war building contracts, where difficulties in performance have arisen in connection with labour or supplies of material. It gives relief generally where fulfilment of a contract is interfered with by a Government Department, thus extending the Defence of the Realm (Amendment (No. 2)) Act, 1915. It excludes from section 1 (2) of the Increase of Rent, &c., Act, 1915, leases of dwelling houses for twenty-one years or upwards, so as to permit of the grant of long leases at a premium without application to the Court under the Courts (Emergency Powers) No. 2 Act, 1916, s. 2; and it gives relief in certain cases to Members of the House of Commons who have, owing to the exigencies of the present war, participated in Government contracts. These provisions were in the original Bill.

#### The Additions to the Bill.

IN ITS progress through the two Houses some important additions have been made. A clause—clause 2—has been introduced intended to relieve tenants who have been prevented by the Defence of the Realm Regulations from performing or observing in any respect the stipulations of their tenancy contracts; in such a case the tenant is to be relieved from the payment of any sum of money or forfeiture to which he would be liable. A clause—clause 5 (1)—has been inserted in pursuance of an undertaking given by the Solicitor-General in the House of Commons, providing for the recovery of excess rent under the Increase of Rent, &c., Act, 1915, which has been paid to the landlord, and thus gets rid of *Sharp Brothers v. Chant* (*ante*, p. 352). Another clause—clause 6—has been added excluding moneys recovered and costs given in actions of tort from section 1 (1) (a) of the Courts (Emergency Powers)

Act, 1914; and by a new clause—clause 8—the whole of section 1 (1) of the Act just mentioned is extended in favour of officers and men of H.M. Forces so as to apply to any sum of money due under a contract made before they joined. With these additions the Bill seems likely soon to become law.

#### Annuities and Income-Tax.

IN THE case of *Re Saillard* (reported elsewhere), NEVILLE, J., has held that a gift by will of an annuity to a solicitor-trustee "free of all duties" does not entitle the solicitor to payment of that amount free from income tax. Taking the words as they stand, the decision seems to be opposed to the intention as expressed in the will, though it is a well-known rule in the construction of wills that the intention as so expressed must be followed. But in *Wall v. Wall* (15 Sim. 513), in 1847, where an annuity was given "clear of all taxes and deductions," SHADWELL, V.C., held that this did not extend to income tax. Referring to section 102 of the Income Tax Act, 1842, he said: "It is quite plain from the language of that section that the thing that is given is the thing that is to pay the tax." The reason is not very conclusive, for, of course, the testator can give free of income tax if he chooses to do so. Thus, while a gift of an annuity "free of all deductions" does not give it clear of income tax (*Gleadow v. Leatham*, 22 Ch. D. 269; *Re Buckley*, 1894, 1 Ch. 286), a gift "clear of all deductions, including income tax" will have this effect (*Re Buckley*), though by a curious subtlety it has been held not to save super-tax: *Re Crawshaw* (60 SOLICITORS' JOURNAL, 275). The phrase "clear of all duties" seems easier to extend to income tax than "clear of all deductions," so that these later cases are not quite in point, and the question before NEVILLE, J., was whether *Wall v. Wall* (*supra*) was really decisive. The learned Judge held that it was, and he followed it; but possibly a strict attention to the language of the will, without reference to authorities, might have led to a different result.

#### Estate Duty and Annuities.

WE PRINTED last week a letter from "BEDFORD ROW" raising the question of the liability for payment of estate duty on the cesser of an annuity where there is no direction for setting apart a fund to meet it, and the answer appears to be given by "SADDLER," whose letter we print this week. Before the Finance Act, 1914, personal estate settled by the will of a testator who died before 1st August, 1894, was, by reason of its having paid probate duty, exempted from E. D. by section 21 (1) of the Act of 1894, until the death of an owner competent to dispose of it; but this exemption was abolished, with the relief given by S. E. D., and S. E. D. itself, by section 14 of the Finance Act, 1914. Hence, in such a case as that put by "BEDFORD ROW," where the testator died in 1892 and bequeathed an annuity payable out of personal estate, the question of payment of E. D. on the cesser of the annuity now arises, just as it did formerly where the annuity was payable out of realty (see *Re Townsend*, 1901, 2 K. B., 331), and has to be determined by reference to section 2 (1) (b) of the Act of 1894. If the annuity was not charged on property, but only secured by covenant, then, apparently, no property would "pass" and no E. D. would be payable (Austen-Cartmell on the Finance Acts, 5th ed., p. 16); but here the annuity is given out of residue, and "SADDLER" appears to be correct in saying that section 2 (1) (b) applies. The annuitant had an interest in the residue, which ceased on her death, and a benefit accrued to the persons taking the residue. In case of the death of a testator after 1894 and before 1914, the question was, as "BEDFORD ROW" pointed out, not as to payment of E. D. on cesser of the annuity, but as to payment of S. E. D. in respect of the settlement made by the creator of the annuity. There was such a settlement if property was directed to be set apart to provide the annuity: *A.-G. v. Owen* (1899, 2 Q. B. 253); *Re St. Albans* (1900, 2 Ch. 873); *Re Campbell* (1902, 1 K. B. 112); and perhaps, also, if there was no direction for or actual appropriation (Austen-Cartmell, Finance Acts, 5th ed., p. 65). But the point on section 2 (1) (b) of the Act of 1894 seems

clearer, and we imagine that E. D. is payable on the cesser of the annuity. As to the question of "aggregation" raised by Mr. DANIEL in another letter which we print elsewhere, the provision of section 4 of the Act of 1894 appears to be applicable to the case of an annuitant, and the capital value of the annuity is aggregable with the rest of the annuitant's estate. Whether the principle of aggregation is intelligible or justifiable is another matter.

#### Liability of Bank on Altered Cheques.

THE COURT OF APPEAL, in *Macmillan v. London Joint Stock Bank* (*ante*, p. 522), appear to have found little difficulty in affirming the decision of SANKEY, J. (1917, 1 K. B. 363). Apart from the possible application of certain sections of the Bills of Exchange Act, 1882—which the Court of Appeal held to be in fact inapplicable—the main contention of the defendant bank appears to have been that the alteration of the cheque was due to the negligence of the plaintiffs, and that they were exempt from liability on the principle of *Young v. Grote* (4 Bing. 253). A cheque drawn for £2 for petty cash was, in consequence of the principal being just on the point of leaving his office for lunch, signed and handed to the clerk with only the figures "£2 0 0" filled in. The clerk altered this to £120, inserted the larger sum in words, and obtained from the bank £120. *Young v. Grote*, it is well known, was a decision in favour of the banker, but it was founded on a specific finding that the customer had been negligent in leaving blank cheques signed by himself with his wife. One was filled up by the wife for £50 2s. and altered by a clerk to £350 2s. It is settled that the decision does not govern a case where the relation is not that of banker and customer, involving a duty not to be negligent, but only some relation—such as that of acceptor and indorsee of a bill of exchange—where there is no such duty: *Scholfield v. Earl of Lonsborough* (1896, A. C. 574). And even where the relation is that of banker and customer, *Young v. Grote* does not apply unless there is in fact negligence; and it has been so frequently distinguished on this ground that it seems almost to have ceased to be of any authority. Thus it was held, in *Colonial Bank v. Marshall* (1906, A. C. 559), that the mere fact that a cheque is drawn with spaces such that a forger can utilize them for the purpose of forgery is not by itself any violation of the customer's obligation to the bank; nor is the omission of the customer to take precautions against forgery by his servants such a violation; *Kepitigalla Rubber Estates v. National Bank of India* (1909, 2 K. B. 1010). It seems to follow, in the present case, that, as the Court of Appeal held, the bank could not claim to debit their customer with £120, but only £2.

#### Perils Incident to Employment.

A SOMEWHAT NOVEL reason was given by the Master of the Rolls in *Fearnley v. Bates & Northcliffe (Limited)* (*ante*, p. 506) for leaving to one of his brethren in the Court of Appeal the task of pronouncing judgment in a Workmen's Compensation case. He had attempted, he said, on several occasions to state the principle involved in the decisions of the court, and had not entirely succeeded; so he would let another Judge try his hand. The point was the old one: when can an accident which arises in the course of the employment be said to arise out of the employment in such a way as to entitle an injured workman to statutory compensation? Of course, the general answer is that it all depends on whether the risk which occasioned the accident is one specially incidental to the particular employment at the moment, or, on the other hand, is one to which the employee is not more exposed than persons not employed like him. The difficulty is to see how this applies in particular cases, and to draw the necessary boundary line. For a long time the rule in *Craske v. Wigan* (53 SOLICITORS' JOURNAL, 560; 1909, 2 K. B. 635) was regarded as governing the case. There a servant-girl sewing for her mistress at an open window was bitten by a cockchafer. It was held that the risk of insect-bite was not a special risk incidental to the employment on which she was engaged, but merely one of the ordinary risks of

everybody's life in a rural neighbourhood in summer-time. Two other groups of allied cases are those known as the "bicycle" and the "orange-peel" cases respectively. In these an employee suffers an accident while riding a bicycle, or by treading on orange-peel in the street, while going about his master's business. The test of liability in such cases is well-settled. It is whether or not it was an essential part of the workman's duty habitually to ride a bicycle in the one case, and in the other to frequent streets where the quantity of orange-peel is abnormal.

#### "Location" Cases.

IN THE case of *Thom v. Sinclair* (ante, p. 350; 1917, A. C. 127), however, the House of Lords reconsidered the principle laid down in *Craske v. Wigan* (supra), and expressed the opinion that it is not applicable in a special class of cases which for convenience are known as "Location" cases. In this group the accident happens "in the course of the employment" and from "a peril attached to the particular location in which, by the obligation of service, the appellant" is placed—to use the language of Lord SHAW in *Thorn v. Sinclair* (1917, A. C., at p. 143). Now, in the present case, *Fearnley v. Bates* (supra), a workwoman employed at a factory was injured by tripping on a piece of wood in a yard while returning from a lavatory used in common for the purposes both of her employer's and another factory. The accident occurred during the employment, and, there being no legal interruption of the employment, "in the course" of it. The Court of Appeal, overruling a county court judge, held that it also arose "out of it." For, although the peril was not a special risk incidental to the nature of the particular employment, but a general risk incidental to the life of everyone, yet the peril in fact "was attached to a location in which, by the obligation of service," the workwoman was placed. The result seems sound, but it is a little difficult really to distinguish *Craske v. Wigan*. The only feasible means of doing so is to regard the cockchafer as an unauthorized intruder on the location of the employment, whereas the wood in the yard was already there and under the employer's control. A subtlety, no doubt, but the whole law on the point is a chaos of conflicting subtleties. To use once again Judge PARRY's expression, it tries us fairly high.

#### Course of Employment.

THE SAME difficulty in distinguishing between similar decisions of the Court of Appeal in Workmen's Compensation Cases is aptly illustrated by *Whittall v. Staveley Coal and Iron Co. (Limited)* (reported ante, p. 523), in which a very old point as to "course of employment" came up in a slightly different form. It has for some years been regarded as settled law that the course of a workman's employment includes, not merely the time he spends on his employer's work, but any time he necessarily spends on the employer's premises on the way to or from his work: *Gane v. Norton Hill Colliery (Limited)* (1909, 2 K. B. 539), and *John Stewart & Son (Limited) v. Loughurst* (ante, p. 414). In the first of these cases an accident happened to a workman on the employers' own premises while he was leaving them by a route crossing a railway line belonging to them; he was using this route with their assent. In the second case, a man employed on a barge lying in a dock was injured while passing through the dock on his way to his work; his employer did not own the dock, but had permission to send him through it to the barge. In both cases it was held that the accident happened "in the course of his employment," so as to entitle him to statutory compensation. Now, in the latest case, *Whittall v. Staveley Coal and Iron Co. (Limited)* (supra), a workman employed at an iron foundry was injured while crossing a railway line on his way home from his work; the route he took was the one usually taken by workmen with the knowledge of their employers, and with the licence of the railway company, who, however, were not their employers, and were not requested by the employers to give their assent. On this ground the Court of Appeal distinguished the two previous cases, and up-

held a county court judge who had decided against the claim of the workman's widow. The principle on which they based their decision is that a workman's right to compensation "in the course of his employment," when he is injured while using a particular way, arises only when it is an implied term of his employment as against his employer that he is at liberty to use the particular way in question for the purpose of access to his place of work. In the first case, this implication arose from the fact that the railway line was on the employers' premises; and in the second case, the workman was using a way across a third party's premises by a licence granted to his employers by that third party. But in *Whittall v. Staveley Coal and Iron Co. (Limited)* (supra), the workman was using a way across a third party's premises by a licence granted to himself with the knowledge of his employers, not granted to his employers for him, and therefore no such implication of law arises. It may be added that, on the facts, although the way was convenient, and the one usually taken by workmen, it could not be called, even by analogy, a "way of necessity"; there were two alternative routes. The distinction between the latter and the two earlier cases is certainly somewhat fine, but, on the other hand, it is clear that there must be some point at which the employers' liability stops, and perhaps the principle laid down by the Court of Appeal fixes the boundary line as well as any other could do it.

#### The Law as to Gifts of Chattels.

IN A CASE recently tried before SHEARMAN, J., the action had been brought by a married woman for the return of a Bedford motor car or its value. The plaintiff's husband, a motoring instructor, made her a present on the wedding day of an 18 h.p. Bedford car. The marriage was not a happy one, and about the end of October, 1916, the plaintiff took the car to the garage of the defendants and asked them to sell it if they could get £150 for it; but eventually the husband was believed to have called at the defendant's premises and to have removed the car. It was contended for the plaintiff that there had been a complete gift of the car, and that her husband was only holding it as a bailee for her. The learned judge, without calling on counsel for the defence, held that there had been no delivery of the car, actual or constructive, to constitute a complete gift, and that the action was not maintainable. In the absence of a full report of the case it would be rash to offer any criticism of the soundness of the decision, or of the authorities upon which it was based. These authorities are collected and examined in the case of *Cochrane v. Moore* (25 Q. B. D. 57), from which it appears that the delivery essential to a gift of chattels is a relic of the ancient law of seisin, and possibly not in conformity with the usages of modern life. If delivery of a chattel could be regarded as notice to the community at large of the transfer of the property in the chattel, there would be strong grounds for holding that such delivery was essential to the validity of the gift. The necessity of this notice is recognized in our Bills of Sale Acts and in the French Civil Code, which requires that every instrument purporting to be a donation *inter vivos* must be drawn up by a notary and a record of it kept in the notary's archives. But the mere delivery of a chattel is an equivocal act. An instance of this delivery is stated to be that if a friend gives me a book in his library, and I at once take it to my own house, a complete transfer of possession is effected. But the transaction is inconclusive. The question remains, was it a gift or a loan? The case under consideration seems to have been decided with little regard to the intention of the parties, and with unnecessary regard for doctrines which the lapse of time has rendered more or less obsolete.

#### The Safety of Ports.

EVERYONE is acquainted with the somewhat archaic language contained in bills of lading, by which the shipowner promises impliedly to perform a voyage to a named port, "or so near thereto as she [the vessel] can safely get." But it is somewhat novel to find an actual case in which the meaning of

those words suddenly acquires a very real importance. Such a case, however, is that of *The Svorono* (*Times*, 26th May), which came before the President on the last day of the Easter Term. The short point in that case was, that in June, 1914, the defendants' vessel took on board at Saigon a cargo of rice belonging to the plaintiff consigned by the bill of lading to Dunkirk. In September, 1914, the ship reached the English Channel, but as the Germans were not very far away from Dunkirk, instead of putting in there, she came on to London. This port, they contended, was the nearest place to Dunkirk "to which she could safely get." They relied also on an alleged refusal of the British and French Admiralty to allow them entry into Dunkirk, but this refusal turned out to be unfounded; so that no question of "Restraint of Princes" arose. For in *Watts & Co. v. Mitsui & Co.* (*ante*, p. 382; 33 T. L. R. 262), the House of Lords has very recently held that there must be an actually existing "restraint" to justify an exception for non-performance of a charter-party on this ground, although extreme "imminence of peril"—as Lords LOREBURN and DUNEDIN said in that case—may amount to an "existing restraint." The learned President found as facts that Dunkirk was not an "unsafe port," and that no restraint of princes, or reasonable apprehension thereof, existed; so that an ingenious defence did not prove successful.

#### The Payment of Dividends on the War Loan.

SOME of the holders of stock in the new Government War Loan have been heard to complain that, after they had given directions that the dividends should be paid to their bankers, these directions have, apparently, been disregarded, and the dividend warrants posted to them directly by the Bank of England. This apparent disregard of instructions is, no doubt, due to the extraordinary pressure of business, and the stockholders may console themselves with the thought, that it was only in 1869 that the Bank was authorized to make arrangements for the payment of dividends on the public stocks by sending warrants through the post. Formerly, the dividends on the Public Funds were payable only to the registered owner, and it was necessary for him to attend, either personally or by his attorney, at the Bank and sign the dividend book every time that he received a dividend. And it should be added that, in the absence of underground railways and motor omnibuses, a journey to the Bank was a much longer business than it is at the present day. The Dividends and Stock Act, 1869, enabled the Bank to send the dividend warrants to any stockholder requesting, in writing, that this should be done. As, however, these warrants are payable only through a banker and require to be signed by the stockholder, we cannot be surprised that he should wish that his banker should relieve him from all formalities in respect of these documents.

#### Corroborative Evidence of Payment.

IN AN action to recover sixpence in the County Court of Clerkenwell the question was whether the plaintiff had handed a shilling and not sixpence to the defendant in payment for a small purchase. The plaintiff sought to strengthen her case by proof that she had borrowed a shilling from a third person immediately before the payment, and the evidence seems to have been accepted by the county court judge, who gave judgment for the plaintiff, holding that the coin which she handed to the defendant was not sixpence but a shilling. We have no doubt that this decision was, on the merits, quite correct; but the corroborative evidence reminds us of that offered by STEENIE STEENSON in Sir WALTER SCOTT'S "Redgauntlet," who paid his rent immediately before the sudden death of his landlord, so that no receipt was forthcoming when the rent was demanded over again by the son and successor of the landlord. POOR STEENIE, when called upon to pay the rent, the amount of which stood against him in the book, was obliged to admit that there was no memorandum of anyone who witnessed the payment, but protested that he had borrowed the money to make the payment out of six purses; but the answer was that there might be no doubt that he had borrowed

the money, but the question was, what proof had he that he had paid the money to the father of his landlord. It is, perhaps, better that the rules of evidence should occasionally be relaxed in our inferior courts.

## Re-examinations for Military Service

WE continue to receive correspondence suggesting various difficulties as to the rights and liabilities of men of military age whom for any reason the military authorities desire to send before a Medical Board for re-examination. It may be useful if we indicate here what, in our view, are the main principles that ought to be borne in mind by practitioners, whether barristers or solicitors, who have to advise upon such cases. The question may arise in at least six different ways. In the first place, we have the case of a man who has been discharged on medical grounds, either after service with the colours or on call-up from the Reserve: in that case no right to re-examination exists, except by review under the Military Service (Review of Exceptions) Act, 1917. Secondly, there comes the case of a man who has been rejected on offering himself for enlistment: here likewise only the mode of review just mentioned applies. Thirdly, we have the case of an *unattested* man who has become a conscript, and then been called up out of the Reserve and rejected: such a man is liable to re-examination in two separate ways—(a) as a soldier in the Reserve, and (b) under the special powers contained in section 1 (c) of the Review of Exceptions Act, which expressly includes "a man who has been previously rejected on any ground, either after offering himself for enlistment or after becoming subject to the Military Service Acts, 1916." Fourthly, we have the case of an *attested* man who has been accepted, but subsequently rejected on call-up out of the Reserve: such a man can be re-examined at any time as a soldier in the Reserve, but the Review of Exceptions Act does not refer to his case—it was unnecessary so to do. Fifthly, there is the *attested* man who has been accepted and classified, or the *unattested* man who has become a conscript and has been classified: each of these is a soldier in the Reserve, and, as such, can be re-examined at any time quite apart from the Review of Exceptions Act, which has no application whatever to his case.

In cases (1) and (2), where the right to re-examine arises under the statute, it is clear that the rejected man, if again rejected, is entitled to six months before he can be called up for further re-examination. Sometimes, however, the military authorities do not reject a man, but only postpone and adjourn part of his medical examination, and relegate him to the Reserve without classifying him—in which case the man is presumably liable to be re-examined at any time without further notice. In cases (4) and (5) the right to re-examine has nothing to do with the Review of Exceptions Act, so that if the man is again rejected, he cannot claim the benefit of six months' interval conferred by the statute, before being called up again for re-examination. In case (3) the right to re-examine arises both because the man is an undischarged reservist and under the statute; so that, apparently, even if the review notice is served under the statute, and the man is thereafter rejected, he can be re-examined at any time—but not by a statutory notice of review, which would be invalid if sent within six months of the rejection. It seems absurd that in such a case—namely, that of a conscript rejected after coming under the Military Service Acts—the validity of a second order to present himself for re-examination should depend upon its form, but this appears to be the effect of the statute. Lastly, it may be pointed out that the holder of a certificate of exemption is not liable to re-examination at all, except under 45c of the Defence of the Realm Regulations, which does not apply to men previously examined by a Medical Board and classified. But a mere applicant for a certificate of exemption does not appear to be in this privileged position: he is not excepted from the operation of the Military Service

Acts pending the decision of his application, but merely protected from being called up out of the Reserve "for service with the colours until the application has been finally disposed of" (first Military Service Act, s. 3 (5)). Whether a Reservist, while protected from being called up for service with the colours, can be called up for medical examination is a complex question of military law, on which it is not easy to venture a decided opinion. But it is difficult to see that such an applicant has any object to serve by refusing to submit himself for re-examination pending the hearing of his claim. For, obviously, on the military representative informing the tribunal of his refusal, the latter would either adjourn his case in order that he might have an opportunity of being re-examined, or, if he refused, would regard his claim as seriously prejudiced by such refusal.

## The Grant of the Right to Use a Pleasure Ground.

THE case of *Whitefield v. Hooper*, which was decided by the Court of Appeal on 26th January, but has not been reported, raised a question which is of considerable public interest, and with regard to which there is a curious lack of authority. A large number of London squares contain gardens, over which the residents are granted certain rights. These "garden rights" are usually provided for by the insertion of a common clause drawn in the form of a grant in all the leases of the neighbouring houses. In *Hood & Challis' on the Conveyancing and Settled Land Acts* (7th ed., p. 158) some doubt seems to be thrown on the efficacy of such grants, and it is suggested that there should be "a covenant not to revoke the licence contained in the grant and to do nothing to interfere with the use of the land in accordance with the licence." It does not appear to have been clearly decided whether the right to use land as a pleasure ground may be granted as an easement, or whether it merely amounts to a licence, and, unfortunately, this point was left undecided in *Whitefield v. Hooper*, although the Court assumed, for the purposes of argument, that there was only a licence in that case. In *Aldred's case* (9 Co. Rep. 57b) it was held that there could not be an easement of prospect, on the ground that it was "a matter only of delight and not of necessity. But the law does not give an action for such things of delight." This seems to lay down the principle that an easement must be a right of utility and benefit, and not only of mere recreation and amusement. In *Mounsey v. Ismay* (34 L. J. Exch., at p. 55) MARTIN, B., asked, "Can a man grant to A. and his heirs the right to walk in his park? Would it pass to his heirs? Is it not a mere licence?" The same Judge, in *Hill v. Tupper* (33 L. J. Exch., at p. 218), put the case of the grant of an exclusive right to the owner of a public-house for all his customers to play at skittles in an adjoining field, and of a stranger coming in and playing, and said: "My opinion is that the owner of the field is the only person who can maintain an action."

In addition to these dicta of Baron MARTIN there are even stronger expressions of opinion by FARWELL, L.J., in *International Tea Stores Co. v. Hobbs* (1903, 2 Ch. 165, at p. 172) and *Attorney-General v. Antrobus* (1905, 2 Ch. 188, at p. 198), that a *jus spatiiandi* is not known to the law and is not "a possible matter of grant or prescription." That such a right cannot be acquired as an easement by prescription seems clear; but it does not necessarily follow that because a right cannot be acquired by prescription it cannot be acquired by express grant: see *Dyce v. Lady James Hay* (1 Macq. 305). If the right to use a garden can merely take effect as a licence, it is difficult to see how it can be made appurtenant to a house, and yet this right, in the case of London squares, is always treated as appurtenant. In *Duncan v. Louch* (6 Q. B. 904) the owner of a house in Buckingham-street claimed a right of way over Adelphi-terrace, under a deed of grant dated March, 1675, whereby there was granted to his predecessor in title

free liberty, use, and privilege of the "Tarris Walke." It was objected that the right proved was not a right of way, but a right to use the walk for pleasure only. But all the Judges (Lord DENMAN, C.J., and PATTISON, COLERIDGE and WIGHTMAN, JJ.) appear to have held that there was no distinction in principle between a right of going backwards and forwards over any part of the close, and a right of way from one point of the close to the other. Lord DENMAN compared the right in question to the right which the inhabitants of a square have to use the square for the purpose of walking in it for pleasure; but this was only a dictum, and it is to be observed that the right granted in *Duncan v. Louch* was not in terms expressed to be for pleasure only. The point discussed in the last edition of Gale on Easements, p. 21, but, curiously enough, *Duncan v. Louch* is not cited.

Assuming that the right to use a pleasure ground is only a licence, a second point arises, viz., how far the right granted is personal to the licensee. In the case of an easement, such as a right of way, such words as "servants, agents," &c., although often expressed, are, in any case, implied: see *Barendale v. North Lambeth Liberal and Radical Club (Limited)* (1902, 2 Ch. 427); but that was the case of a right of utility and not of mere amusement. The distinction between a licence of pleasure and a licence of profit was taken in the *Duchess of Norfolk's case* in the thirteenth century (Year Book, 12 Hen. 7, 25, and 13 Hen. 7, 13, p. 2). It is there stated that "if I give leave to another to go at his pleasure into my orchard, none of his servants can justify by that licence; but if it is a licence of profit and not of pleasure it is otherwise; for if one give leave to use to carry over his land with any cart, my servants can justify by the licence." Thus a licence to hunt *simpliciter* was held to be personal; but a licence to hunt and *take away the deer* was held to be a licence of profit, that is to say, a *profit à prendre*, which is, of course, an incorporeal hereditament: see *Wood v. Leadbitter* (13 M. & W. p. 845). In *Wickham v. Hawker* (7 M. & W. 63, at p. 79) Baron PARKE laid down that a grant of a right to hunt to A., his heirs and assigns, must be construed as a *profit à prendre*, which may be exercised by licensees. It is difficult to apply the decisions as to sporting rights to the case of a pleasure ground, since it is obvious that the right to use a pleasure ground cannot be *profit à prendre*; but "in the case of a licence given to go on land for purpose of pleasure, there appears to be authority for saying that the licence is to be construed strictly, and, in the absence of sufficient context, must be held not to confer anything beyond a mere personal licence, and not to extend to servants or agents": per ROMER, L.J., in *Frank Warr & Co. (Limited) v. London County Council* (1904, 1 K. B., at pp. 722-723). That the right to use a pleasure ground must be construed more strictly than the grant of a right of way appears from the decision of BUCKLEY, J., in *Keith v. Twentieth Century Club* (73 L. J. Ch. 545), where it was held that the members of a ladies' club in Ladbrook-square were not entitled to use the square garden. In that case the language of the grant extended to tenants and friends, but, at the time of the grant, the houses were all of a residential character. To use the language used by ROMER, L.J., the question in each case must be whether there is "sufficient context." In *Whitefield v. Hooper*, referred to above, there was a conveyance in fee simple of a house at Newquay, together with the right to use a piece of ground extending towards the sea "as a pleasure ground only." The house was described as "now known as the Great Western Hotel," but there was no assignment of goodwill or any other reference to the fact that the house was a hotel. The Court of Appeal, however, held that the fact that the house was a hotel was sufficient context to shew that the licence was not personal, and extended to all guests staying in the hotel.

Mr. Beal Frederick French, aged eighty-three, of Worthing, who practised as a solicitor for sixty-three years, left the income from £11,000 to his housekeeper for life and £285 to charities. He left estate of the gross value of £57,981.

## An Epitome of Recent Decisions on the Workmen's Compensation Act.

By ARTHUR L. B. THESIGER, Esq., Barrister-at-Law.

(Cases decided since the last Epitome, Vol. 60, p. 215.)

### (1) DECISIONS ON THE WORDS "ACCIDENTS ARISING OUT OF, AND IN THE COURSE OF, THE EMPLOYMENT."

*Thom or Simpson v. Sinclair* (H.L.: Viscount Haldane, Lords Kinnear, Shaw and Parmoor, 30th and 31st October, 1916; 8th March, 1917).

FACTS.—A woman employed as a fish curer was injured through the fall of a brick wall in course of erection on ground belonging to someone else, but contiguous to the curing shed where she worked, on to the roof of the shed. The Sheriff-Substitute held that the accident arose out of and in the course of her employment, and awarded compensation. The Second Division of the Court of Session reversed this decision.

DECISION.—The Sheriff-Substitute was right in holding that the accident arose out of the employment. (Case reported SOLICITORS' JOURNAL, 24th March, 1917, p. 350; *Times*, 9th March, 1917; *W. N.*, 17th March, 1917, p. 97; *L. T.* newspaper, 17th March, 1917, p. 344; *L. J.* newspaper, 31st March, 1917, p. 126; 1917, *A. C.* 127.)

*John Stewart & Son* (1912) (Limited) *v. Longhurst* (H.L.: Lord Finlay, C., Earl Loreburn, Lords Dunedin, Atkinson and Buckmaster, 19th February, 23rd March, 1917).

FACTS.—Two men employed by a firm of engineers and ship repairers were working on a barge which the employers had contracted to repair. The barge was at the time in a dock basin belonging to the Port of London Authority. The men could only obtain access to this dock basin by the dock gates, where leave to enter, either expressed or implied, had to be got from the man in charge. They started to leave one very dark evening after their work was finished. Both got from the barge to the dock, but one of them failed to reach the dock gates, and his body was subsequently found in the dock basin. The county court judge made an award in favour of the employers, but the Court of Appeal reversed this decision, and awarded compensation to the man's widow.

DECISION.—As the deceased obtained access to the docks only for the purposes of his work, his employment continued until he had passed out of the dock gates, and therefore the accident arose both out of and in the course of his employment. (Case reported SOLICITORS' JOURNAL, 21st April, 1917, p. 414; *W. N.*, 31st March, 1917, p. 120; *L. T.* newspaper, 31st March, 1917, p. 378; *L. J.* newspaper, 21st April, 1917, p. 149.)

*Lancashire and Yorkshire Railway Co. v. Highley* (H.L.: Lord Finlay, C., Viscount Haldane, Lords Dunedin, Atkinson and Sumner, 9th and 23rd March, 1917).

FACTS.—A workman was told by his foreman to go with other men by train to work at Goole. They had to change at Wakefield, where they had to wait for an hour. The foreman told the men to have their breakfast, which they had brought with them. They required hot water for tea; this could be obtained from a mess room provided by the railway company for men working on the line. The shortest, though not the only, way to reach the mess room from the platform where the men were was by crossing the lines. The workman went across the lines and climbed under a train in a siding. Owing to a curve in the line he could not see that there was an engine on the train. The train started while he was between two trucks, and he was killed. The county court judge held that the workman had taken on himself an additional and unnecessary risk, but the Court of Appeal reversed that decision, and awarded compensation.

DECISION.—There was no reason for overruling the finding of fact by the county court judge. Appeal allowed. (Case reported SOLICITORS' JOURNAL, 14th April, 1917, p. 399; *W. N.*, 31st March, 1917, p. 119; *L. T.* newspaper, 31st March, 1917, p. 378.)

*Doherty or Lyons v. Woodilee Coal and Coke Co. (Limited)* (H.L.: Earl Loreburn, Lords Shaw, Parker, Sumner and Parmoor, 27th April, 1917).

FACTS.—A brusher in a mine having finished his night's work got to the shaft to be taken to the surface just when the daily statutory inspection of the shaft was beginning. The inspection, which usually took half an hour, on this morning, owing to the breakdown of a bell wire, took an hour. While waiting, the workman caught a chill, which developed into pneumonia, from which he died. His widow claimed compensation, but the Sheriff-Substitute held the workman's death was not due to an accident. The First Division of the Court of Session affirmed this decision.

DECISION.—The Sheriff-Substitute's decision was a question of fact,

in support of which there was evidence. Appeal dismissed. (Case reported SOLICITORS' JOURNAL, 26th May, 1917, p. 490; *W. N.*, 5th May, 1917, p. 151; *L. T.* newspaper, 5th May, 1917, p. 5; *L. J.* newspaper, 12th May, 1917, p. 187.)

*Whittall v. Staveley Coal and Iron Co. (Limited)* (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 8th and 9th May, 1917).

FACTS.—A workman employed by a firm of ironfounders was killed while walking on the railway line from the place where he was employed to the railway station. It was possible to reach the station by the public road, by the railway, or partly by the road and partly by the railway. The deceased was using the latter way, most men used the railway entirely. The distance of the three ways was approximately the same. The men were permitted by the railway company to use the line, and there was a notice put up that no one but these workmen were allowed to use the line, and they only when going to and from their work. The county court judge found that the permission by the railway company to the men to use the line was not given at the instance of the employers, and held that the accident did not arise either out of or in the course of the employment.

DECISION.—The judge was right; there was no evidence of any arrangement between the employers and the railway company. (From note taken in court. Case reported SOLICITORS' JOURNAL, 9th June, 1917, p. 523; *L. T.* newspaper, 19th May, 1917, p. 39; *W. N.*, 26th May, 1917, p. 179.)

*Fearnley v. Bates & Northcliffe (Limited)* (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 9th and 10th May, 1917).

FACTS.—A woman slipped on a piece of wood lying in a yard which she was crossing in order to reach a convenience. She was the only woman employed by the respondents, and as they had no separate convenience for women as required by the Home Office, they arranged that the applicant should use a convenience on adjoining premises. The only means of access to it was across the yard which was common to their and their neighbour's premises. The county court judge held that the accident arose in the course of, but not out of the employment.

DECISION.—*Thom v. Sinclair* (1917, *A. C.* 127) was indistinguishable; appeal allowed. (From note taken in court. Case reported SOLICITORS' JOURNAL, 2nd June, 1917, p. 506; *W. N.*, 19th May, 1917, p. 170; *L. T.* newspaper, 19th May, 1917, p. 39; *L. J.* newspaper, 26th May, 1917, p. 203.)

*Carpenter v. Mayor and Corporation of Westminster* (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 11th and 14th May, 1917).

FACTS.—A workman left home in the morning apparently in perfectly good health. In the middle of the day he was found lying on the floor in great pain. He was taken home, and ten days later to a hospital, where he was operated upon. He was found to be suffering from peritonitis, from which he ultimately died. At the hearing two doctors gave evidence that the man's condition was due to some external violence in the form of a blow. The medical referee advised the deputy county court judge that the condition described by the doctors was equally consistent with peritonitis caused by external injury or by physical causes apart from any accident. The judge refused to award compensation.

DECISION.—The judge was entitled either to accept or to reject the opinion of the medical referee. Appeal dismissed. (From note taken in court. Case reported *L. T.* newspaper, 26th May, 1917, p. 54.)

### (2) DECISIONS ON THE AMOUNT OF COMPENSATION

*Price v. Guest, Keen, & Nettlefold (Limited)* (C.A.: Lord Cozens-Hardy, M.R., Warrington L.J., and Lawrence, J., 2nd, 6th and 8th February; 2nd March, 1917).

FACTS.—A workman was killed by accident on 10th March, 1916. He had been employed by the respondents under the terms of the Conciliation Board agreement of April, 1910, for some years until 30th June, 1915, when that agreement expired owing to three months' notice to terminate it having been given. For the next fortnight, while negotiations for a new agreement were pending, he and the rest of the men continued at work on "day by day" contracts. On 14th July all the men came out on strike in pursuance of a resolution of the miners' executive committee. On 22nd July the men resumed work under a provisional agreement, and on 2nd September a new agreement, dating back to 15th July, was entered into, under which the workman worked until his death. The county court judge held that there had been a break in the employment when the workman came out on strike, and awarded £300, as the average weekly earnings since that time, multiplied by 156, came to more than that sum.

DECISION.—The absence from work was voluntary, and not due to any unavoidable cause. The service therefore had been practically continuous, and the actual sum earned in the three years before death, namely, £259 4s., was the proper compensation. (From note taken in court. Case reported SOLICITORS' JOURNAL, 10th March, 1917, p. 315;

*Times*, 3rd March, 1917; *W. N.*, 10th March, 1917, p. 83; *L. T. newspaper*, 10th March, 1917, p. 328; *L. J. newspaper*, 10th March, 1917, p. 974.

**Watts v. Manchester Corporation** (C.A.: Lord Cozens-Hardy, M.R., Warrington, L.J., and Lawrence, J., 8th and 9th February; 2nd March, 1917).

**FACTS.**—A fireman was permanently incapacitated by accident. Under the corporation superannuation scheme he was entitled to a pension payable out of a fund provided partly by dividends on an invested fund, partly by contributions by the men out of their pay, the deficiency being made up by the corporation out of the city rate. The corporation contended that to the extent that the pension was provided by them it was a "payment, allowance or benefit" to which regard ought to be had in fixing the weekly compensation. The county court refused so to regard it.

**DECISION.**—The judge was wrong; it was a payment to which regard ought to be had. Appeal allowed. *(From note taken in court. Case reported W. N., 10th March, 1917, p. 84; L. J. newspaper, 24th March, 1917, p. 117.)*

**Hudson v. Camberwell Borough Council** (C.A.: Lord Cozens-Hardy, M.R., Warrington, L.J., and Lawrence, J., 9th February, 1917).

**FACTS.**—A workman was injured by accident in December, 1915. In May, 1916, he was paid £3 and £8 by a claims assessor, and signed an agreement to accept £33 in full settlement. This agreement was never acted upon, and the workman said he thought he was only signing a receipt for the £3. In September, 1916, he agreed to accept £75 and a sum for costs in full settlement. The registrar refused to record the agreement on the ground of inadequacy, and referred it to the county court judge. The judge refused to record the agreement on the grounds that it had been obtained by fraud, that it was inadequate, and that by the agreement the workman contracted himself out of the Act.

**DECISION.**—The judge was not justified in finding fraud which was an issue which had not been raised on behalf of the workman, and of which there was no evidence. He ought to have given the parties charged with the fraud an opportunity of explaining the position. As the agreement was not for the redemption of a weekly payment, and the workman was not an infant, there was no jurisdiction to refuse to record it on the ground of inadequacy. *(From note taken in court. Case reported L. T. newspaper, 24th February, 1917, p. 295; L. J. newspaper, 3rd March, 1917, p. 86.)*

**Helps v. Great Western Railway** (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 10th May, 1917).

**FACTS.**—A railway porter was injured by accident. His average wages were £1 5s. 1d. a week, and he also received on the average 12s. a week in tips. According to the evidence of the railway company, tips were forbidden from 1855 to 1913; in 1913 a new rule was made prohibiting the soliciting of tips. No porter had for twenty years been dismissed for receiving a tip, but some porters had been suspended or cautioned for doing so. The county court judge held that the practice of tipping was open and notorious, and had been sanctioned by the company by their withdrawal of the rule prohibiting porters from accepting tips; and that therefore the tips should be taken into consideration in assessing compensation.

**DECISION.**—The judge was right; the case fell within the decision in *Penn v. Spiers & Pond (Limited)* (1903, 1 K. B. 766). *(From note taken in court. Case reported SOLICITORS' JOURNAL, 26th May, 1917, p. 490; Times, 11th May, 1917; L. T. newspaper, 19th May, 1917, p. 39.)*

**Simms v. Lilleshall Co. (Limited)** (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 10th and 11th May, 1917).

**FACTS.**—A collier met with a fatal accident, and his daughter claimed compensation as a total dependant. She had been in domestic service, but had come home to nurse her mother. The mother had died, and for the last eight years the daughter had kept house for her father, who provided her with clothes, board and lodging, and provided her with pocket money. The county court judge held that she was well able to support herself by her own work, and that her father's earnings were not the sole source to which she could have looked; that she was therefore only a partial dependant.

**DECISION.**—The question whether the daughter could have maintained herself was irrelevant. Appeal allowed. *(From note taken in court. Case reported W. N., 19th May, 1917, p. 171; L. T. newspaper, 26th May, 1917, p. 54; L. J. newspaper, 9th June, 1917, p. 223.)*

### (3) MISCELLANEOUS DECISIONS.

**Linthorpe Dinsdale Smelting Co. (Limited) v. Hoy** (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 14th and 15th May, 1917).

**FACTS.**—A boy met with an accident and fractured one of his hips in 1912. The employers paid compensation without any agreement or

award until 1915, when an application was made by the boy for an increase of the weekly payment. Evidence was then called on behalf of the employers that he was suffering from rickets, and not from the result of the accident; doctors called for the boy stated that his hip was in a tubercular condition due to the accident. The county court judge found that the boy's condition was due to the accident. In 1917 the employers applied to review the weekly payments, and tendered evidence which had been refused at the last hearing. The deputy county court judge held that he could not go behind the decision come to in 1915.

**DECISION.**—The deputy county court judge was right. *(From note taken in court. Case reported L. T. newspaper, 26th May, 1917, p. 55.)*

**Shaddick v. Palmers' Shipbuilding and Iron Co. (Limited)** (C.A.: Lord Cozens-Hardy, M.R., Bankes and Warrington, L.J.J., 15th and 16th May, 1917).

**FACTS.**—A workman was injured by accident, and his employers were willing to pay him £1 a week. The workman desired his employers to give him an unconditional admission of liability to pay compensation during both total and partial incapacity, and his trade union tried to get the employers to sign an agreement which they had prepared. On the employers refusing to sign it, the workman issued a request for arbitration. The employers contended that there was no question in dispute, but the county court judge held that there was a question.

**DECISION.**—There was no agreement between the parties capable of being recorded, and therefore a question had arisen. *(From note taken in court. Case reported SOLICITORS' JOURNAL, 16th June, 1917, p. 545; L. J. newspaper, 9th June, 1917, p. 94.)*

## Correspondence.

### Estate Duty and Annuities.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—I am at a loss to understand "Bedford Row's" difficulty. The annuity was a charge on the residuary estate, and obviously the annuitant had an interest in the residue ceasing on her death, and equally obviously a benefit to the extent of £40 per annum has accrued to the residuary legatees (see Finance Act, 1894, s. 2 (1) (b)).

Since the passing of the Finance Act, 1914, I have spent quite an appreciable amount of time in explaining to trustees that estate duty is payable on the death of an annuitant. Before the passing of the Finance Act, 1914, the point only arose when the testator whose will created the annuity died before 1st August, 1894, and the fund from the income of which the annuity was paid was derived wholly or partly from property on which (stating it shortly) probate duty had not been paid—e.g., realty. "SADDLER."

9th June, 1917.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—Referring to the letter "Bedford Row," in your issue of the 9th inst., the authorities, on the death of an annuitant, claim that the value of the annuitant's estate is aggregable, for the purpose of determining the rate of estate duty, with the capital necessary to provide the annuity. This also seems most unfair, because nothing passes to the annuitant's estate. As this question goes with the point raised in the above letter, it would be interesting if you would express your opinion on this point also when you consider the letter "Bedford Row."

J. DANIEL, Managing Clerk.

39, Bedford-row, London, W.C. 1.

13th June, 1917.

[See under "Current Topics."—ED. S. J.]

### Military Service.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—The Army authorities claim, under the authority of the Army Council Instruction No. 643 of 19th April, 1917, the re-examination by an Army Medical Board of all men who have been previously examined and classified either B or C, if such men are in the Army Reserve.

The Military Service (Review of Exceptions) Act gives the right to require re-examination in the case of rejected men, and Regulation 45c of the Defence of the Realm Regulations gives a similar right to compel men holding certificates of exemption, etc., to be medically examined, but in the latter case only if they have not been previously medically examined by an Army Medical Board and classified.

In the particular instance, the man has applied to the tribunal for exemption, and his case stands adjourned. The military authorities seek to have him re-examined in the interval. The

man cannot be called to the colours until his application has been finally disposed of, but he is in the Reserve, and, perhaps, therefore, bound to obey orders of the Army Council other than a calling up order. Your opinion on the point will be valued.

WM. C. E. BRIGNALL.

14, High-street, Stevenage, Herts. June 8.

[See under "Current Topics." We are afraid we cannot deal with these matters except generally.—Ed. S.J.]

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—I should be glad to have your views on the following point:—

A man of military age, who has been rejected on many occasions, was called up under the Military Service (Review of Exemptions) Act, 1917, for re-examination. The result of the examination was that his card was marked "R. R.," and with the following words added: "To be called up for re-examination within two months."

It appears to me difficult to see how these latter words can be justified in view of section 1 (5) of the above Act, which appears to entitle him to six months' notice.

J. LISTER WALSH.

Finsbury-court, Finsbury-pavement, London, E.C. 2.

June 9.

[See under "Current Topics." Our correspondent does not indicate the status of the man before review—for example, whether attested or unattested—which may, as we point out elsewhere, affect his position.—Ed. S.J.]

## CASES OF THE WEEK. Court of Appeal.

**HOGARTH SHIPPING CO. (LIM.) v. BLYTH, GREENE, JOURDAIN & CO. (LIM.).** No. 2. 1st and 2nd May; 11th June.

SHIPPING—BILL OF LADING—CLAIM BY INDORSEES TO RECOVER SHORT DELIVERY FROM SHIPPERS—CHARTER-PARTY—CONCLUSIVE EVIDENCE CLAUSE—ALLEGED, INCORPORATION OF CONDITIONS AND EXCEPTIONS OF CHARTER-PARTY.

A claim made by receivers of a cargo as indorsees of bills of lading for short delivery as specified of a number of bags of sugar was based upon a clause in the charter-party that the bills of lading were to be deemed conclusive proof of cargo shipped. The bills of lading contained the statement that the weight, contents and value of the bags shipped were unknown.

Held, that the conclusive evidence clause formed no part of the bill of lading, and therefore the claim failed.

Decision of Lush, J., affirmed.

Appeal by the defendants from a judgment of Lush, J., on a special case stated by an arbitrator raising the question whether the charterers of a ship could recover for alleged short delivery, the charter-party providing that the bills of lading should be conclusive as to the cargo shipped while the bills of lading contained the statement that the weight, contents and value of the bags shipped were unknown. Lush, J., held that the bill of lading was conclusive only as to the number of bags in the sense of skins or receptacles, and determined that the receivers were entitled only to £4 2s. 5d. From that decision this appeal was brought. At the close of the arguments judgment was reserved.

SWINFEN EADY, L.J., in the course of his judgment, said: A claim was made by the receivers of cargo for short delivery of a number of bags of sugar. It was based upon a provision in a charter-party alleged to be incorporated in the bill of lading that the bills of lading were to be deemed conclusive proof of cargo shipped. The arbitrator found that in the bill of lading the number of bags was over-stated, and that the ship delivered all the bags which it received. Also that the bill of lading was not conclusive as to cargo shipped either as to number of bags or weight of their contents, and he found that the receivers were not entitled to any more from the shipowners. If, however, the Court should hold that the bill of lading was conclusive as to the number of bags of sugar shipped, then he would award that there were 160 bags and six pockets short delivered, and that their value was £277 19s. 3d., from which £129 6s. 2d. balance of freight would have to be deducted. If, however, the bill of lading was conclusive only as to the number of bags in the sense of skins or receptacles, then the receivers were entitled to £4 2s. 5d. for short delivery. From the points of claim it appeared that the parties claiming were the Royal Commission on the Sugar Supply, acting on behalf of His Majesty the King. They claimed as indorsees of the bill of lading, which had been indorsed to them by the shippers of the cargo (acting for the Mauritius Commercial Bank), and in paragraph 3 of the points of claim they alleged that they were the *bona fide* holders in due course of the bills. That paragraph of the points of claim was expressly admitted by paragraph 3 of the points of defence. The arbitrator in his award stated that no claim was put forward before him by the receivers

that the bill of lading in the form in which it was signed constituted a breach by the shipowners of their obligations under the charter-party. The difficulty arose from the respective alleged conflicting provisions of the charter-party and the bills of lading. The charter-party provided that the ship should load a full and complete cargo of sugar bags not exceeding 7,200 tons, and not less than 6,800 tons. Clause 12 of the charter-party provided that the captain was to sign Eastern Trade Bills of Lading, which were to be deemed conclusive proof of cargo shipped. The bill of lading stated that there had been shipped in good order and condition 87,966 bags and 7,453 pockets of sugar weighing gross 7,390,125 kilos, and five cases of sugar samples, marked and numbered as per margin, and to be delivered subject to the exceptions and conditions hereinafter mentioned in the like good order and condition. Then appeared this statement: "The following are the exceptions and conditions above referred to. Weight, measure, quality, contents, and value unknown." The marks and numbers of the bags and pockets were stated in the margin with the gross and net weight in kilograms. The bill of lading contained the words after the date and before the signature, "Freight and all other conditions and exceptions, as per charter-party." The appellants contended that, having regard to the terms of the charter-party, the bill of lading incorporated the provisions of clause 12 of it, and that the bills of lading were to be deemed conclusive proof of cargo shipped, and accordingly that the bill of lading in question must be deemed conclusive proof of cargo shipped, and that it was not competent for the arbitrator to entertain the question whether the quantity delivered by the ship included all the bags which it actually received when the deficiency was included in the quantity stated in the bill of lading to have been shipped. The respondents relied upon the clause in the bill of lading, "Weight, measure, quality, contents, and value unknown," and they contended that with such a provision the bill of lading was not conclusive as to the quantity shipped, and moreover, claimed that if there were any discrepancy between the charter-party and the bill of lading the latter prevailed. Now a clause in a bill of lading, "Weight, measure, quality, contents, and value unknown," would protect a shipowner against liability to an indorsee on the footing of an estoppel as regarded the weight, measure, &c., appearing in the bill of lading. The shipowner was bound to carry and deliver safely the goods received by him, whatever their weight, measure, &c., might be. The description in the bill of lading amounted to no more than this—that the shipper represented that such and such were the weight, contents, &c., but that the owner had no knowledge of the matter, and did not admit the accuracy of the description. The bill of lading was only *prima facie* evidence against the shipowner, and might be displaced: *Jessel v. Bath* (L. R. 2 Ex. 267.) If the clause "Weight, measure, &c., unknown" applied and was to be given effect to, and the conclusive evidence clause was not incorporated, the claim of the appellants, which was as indorsees of the bill of lading, failed. The question therefore arose, Was the evidence clause incorporated in the bill of lading by the words "Freight and all other conditions and exceptions as per charter-party"? Such decisions of *Serrano v. Campbell* (1891, 1 Q. B. 283), and *Diedeuchsen v. Farquharson* (1898, 1 Q. B. 150) laid down a rule of construction on which the answer was in the negative. The conclusive evidence clause was not therefore incorporated in the bill of lading as a condition of the charter-party. It did not form an exception or a qualification to the shipowner's liability, but an extension of it: it rendered him liable for goods stated to have been shipped on board, whether actually so shipped or not. A contrary view would be repugnant to the clause "Weight, measure, &c., unknown." The same principle was applicable to exceptions: Thus clause 12 of the charter-party, "The captain to sign Eastern Trade Bills of lading . . . and their conditions to form part of the charter-party," was where the shipowner agreed to deliver subject to the exceptions and conditions hereinafter mentioned. The clause "Weight, measure, &c., unknown" was a term expressed to be one of the exceptions or conditions "above referred to." The bill of lading ought not to be interpreted as having inconsistent provisions incorporated in it where that could be avoided. In his lordship's judgment the conclusive evidence clause formed no part of the bill of lading in question, and accordingly the appeal failed.

SCRUTTON, L.J., and BRAY, J., gave judgment to the same effect. Appeal dismissed, with costs.—COUNSEL, for the appellants, G. A. H. Branson; for the respondents, C. T. Le Quesne. SOLICITORS, *Waltons & Co.; Botterell & Roche.*

[Reported by ERSKINE REID, Barrister-at-Law.]

## High Court—Chancery Division.

**Re SAILLARD. PRATT v. GAMBLE.** Neville, J. 5th June.

WILL—SOLICITOR—TRUSTEE—ANNUITY OF £200 A YEAR "FREE OF ALL DUTIES"—INCOME TAX.

An annuity of £200 a year "free of all duties."

Held, not to be payable free of income tax, because the thing that is given, namely, the annuity, is the thing that is to pay the tax.

Wall v. Wall (1847, 15 Simons, 513) followed.

This was a summons to determine whether an annuity was to be paid free of income tax. The testator directed an annuity of £200 to be paid "free of all duties" to any trustee of his will who should be a

solicitor out of the income of his estate for and in respect of his trouble in acting as trustee of his will, so long as he should continue to act as such trustee, and also gave him power to charge. The solicitor contended that he was entitled to the annuity free of income tax.

NEVILLE, J., after stating the facts, said: The £200 is not to be paid free of income tax. This case is covered by the decision of Shadwell, V.-C., in *Wall v. Wall* (1847, 15 Sim. 513). The words there are a little different, being "clear of all taxes and deductions," but the ground of the Vice-Chancellor's judgment that the thing that is given is the thing that has to pay the tax applies equally in the present case.—COUNSEL, Owen Thompson; J. H. Redman; Wright Taylor. SOLICITORS, Nye, Moreton, & Clowes; J. Gamble.

[Reported by L. M. MAY, Barrister-at-Law.]

## King's Bench Division.

D. P. ANDERSON & CO. (LIM.) v. THE LIEBER CODE CO.

Bailhache, J. 8th June.

COPYRIGHT—TELEGRAPHIC CODE—"ORIGINAL LITERARY WORK"—COPYRIGHT ACT, 1911 (1 & 2 GEO. 5, c. 46), s. 1, SUB-SECTION (1); s. 35.

The plaintiffs prepared and published a telegraphic cipher code consisting of five letters, each word constructed differing from every other word in at least two out of the five letters. The words so formed were meaningless, and when the plan on which the words were to be composed was decided upon they were produced mechanically. On this plan the plaintiffs' code in manuscript resulted in a compilation of over 400,000 words. Subsequently this was reduced to 100,000 words by the application of two principles—first, that all the words should, in the compiler's opinion, be pronounceable; secondly, that they should be selected so as to make errors in transmission by the Morse code as little likely as possible.

Held, that such a code was "an original literary work," and was entitled to the protection of the Copyright Act, 1911.

Action for infringement of copyright. The plaintiffs carried on the business of telegraph code compilers, and they published in 1912 a code known as "The Empire Cipher Code." It consisted of words of five letters and no more, each word being so constructed that every word differed from every other word in at least two out of the five letters. In December, 1915, the defendants published and sold a book described as "Lieber's Code with five-letter ciphers (two-letter variations)," which the plaintiffs alleged infringed their copyright by reproducing the greater part of the five-letter words from the plaintiffs' code. The defendants denied that the plaintiffs' code was an original literary work as its compilation required no skill, was a purely mechanical process, and was not the subject of copyright at all. The Copyright Act, 1911, sub-section (1), provides: "Subject to the provisions of this Act copyright shall subsist . . . in every original literary, dramatic, musical and artistic work. . . . By section 35: "In this Act, unless the context otherwise requires, "literary work" includes maps, charts, plans, tables and compilations. . . ." In the course of the arguments the following cases were cited: *Ager v. Peninsular & Oriental Steam Navigation Co.* (1894, 26 Ch. Div. 637, 33 W. R. 116); *Ager v. Collingridge* (1896, 2 T. L. R. 291); *Hollnake v. Truswell* (38 SOLICITORS' JOURNAL, 706; 1894, 3 Ch. 420); *Libraio (Limited) v. Shaw Walker* (1913, 30 T. L. R. 22); *Blacklock & Co. (Limited) v. C. Arthur Pearson (Limited)* (1915, 2 Ch. 376). Since the Act of 1911 no case has raised the question in issue in the present case, and the definitions in the Act of 1911 are different from those of the earlier Acts.

BAILHACHE, J.—The compiler of this code has given evidence that, having produced a list of 450,000 words by his method, which is said by defendants to be purely mechanical, he proceeded to cut down that number to 100,000, the number in the code as it stands. He did this on two principles: First, the cable companies insist that any code word must be pronounceable; secondly, he had in view the elimination of such words as would be specially liable to errors in transmission by the Morse code. It is said this work is not literary because the words are meaningless. There is no reason for accepting this argument. There has been no helpful decision since the Act of 1911, but before the Act there was the case of *Ager v. Peninsular & Oriental Steam Navigation Co.* (*supra*). Mr. Ager was an accomplished linguist, and he constructed a code from the actual words of several languages, thus producing the same results as the compiler of this code. As collected by him the words were meaningless. It was not intended they should bear their natural meanings, the sole object being the production of words suitable for an actual code. His claim to copyright was upheld, but this turned only on the question of infringement. In *Ager v. Collingridge* (*supra*), two years afterwards, the question of his right to copyright was raised, and decided in his favour for reasons which appear in the judgment of Kay, J., and which are entirely applicable to the present case. It is true that case was before the Act of 1911, and the words are not the same, but in substance it is indistinguishable from the case of *Ager*. The "Empire Cipher Code" was a proper subject of copyright. There has been an infringement, and there will be an injunction against the defendants, with an order for the destruction of copies of their code which incorporates parts of the plaintiffs' code.—COUNSEL, Hahler, K.C., and Ernest G. Palmer, for the plaintiffs; Kerly, K.C., and D. M. Hogg. SOLICITORS, Montagu, Mileham, & Montagu; Harold St. Paul.

[Reported by G. H. KNOTT, Barrister-at-Law.]

## CASES OF LAST SITTINGS.

### Court of Appeal

SHADDICK v. PALMER SHIPBUILDING AND IRON CO. (LIM.).

No. 1. 15th and 16th May.

WORKMEN'S COMPENSATION—"QUESTION ARISES"—ADMISSION BY EMPLOYER OF FULL LIABILITY—OFFER TO PAY FULL COMPENSATION WEEK BY WEEK UNTIL REVIEW, BUT REFUSAL BY HIM TO SIGN ANY FORM OF AGREEMENT—APPLICATION BY WORKMAN TO COUNTY COURT—JURISDICTION TO MAKE AN AWARD—WORKMEN'S COMPENSATION ACT, 1906 (6 ED. 7, c. 58), s. 1 (3).

An employer admitted full liability for an injury by accident to a workman which resulted in total incapacity. He told him that he would be paid full compensation week by week, but he refused to sign any form of agreement which the workman could have registered. Thereupon correspondence followed between the man's union and his employer, with the result that a request by the workman was made for arbitration to the county court. The county court judge was of opinion that he had jurisdiction to make an award, as a question had arisen between the parties as to the payment of compensation within the meaning of section 1 (3) of the Act.

Held, that the correspondence shewed that a "question" had arisen, and the county court judge had jurisdiction therefore to make an award.

Appeal by the employers from an award of the county court judge at Jarrow. The applicant was employed by the Palmer Shipbuilding and Iron Co. (Limited), and he met with an accident. The employers admitted liability, and they expressed their readiness to pay him £1 a week on the footing of total incapacity. There was correspondence between the man's union and his employers, the latter asserting that as they were willing to pay the full compensation under all the conditions imposed by the Act upon them, there could be no "question" upon which the arbitrator could arbitrate. The union, representing the workman, did not go so far as to say that they had a right to compel the employers to sign a particular form of agreement, and that except in that form they would not file a memorandum of the agreement to pay the £1, but they said there was a "question," and therefore they were entitled to go to the county court and obtain a declaration that the agreement should be filed in a certain form. The county court judge was of opinion that the applicant was entitled either to record a memorandum of agreement to pay compensation until it should be ended or diminished in accordance with the provisions of the Act, or to an award. There was no agreement, nor was there such an admission of liability as would enable the applicant to record a memorandum of agreement. The respondents admitted liability to pay compensation, and offered £1 a week, but they did not admit liability to continue to pay compensation until the same should be ended or diminished in accordance with the provisions of the Act; and he found as a fact that there was a dispute as to the duration of the compensation. From his award this appeal was brought.

In support of the appeal the following cases were cited: *Payne v. Fortescue & Sons (Limited)* (57 SOLICITORS' JOURNAL, 81; 1912, 3 K. B. 346); *Mercer v. Hilton* (1909, 3 B. W. C. C. 6); *Madden v. Guest's Executors* (1916, 1 K. B. 76); *Round v. Wathen & Son* (10 B. W. C. C. 35); *Freedland v. Summerlee Iron Co. (Limited)* (1913, 57 SOLICITORS' JOURNAL, 231; 1913, A. C. 221). Without hearing counsel for the respondent.

LORD COZENS-HARDY, M.R., in dismissing the appeal, said the employers admitted liability for the accident, and they tendered, in the sense that they offered, the workman £1 a week—the full amount of their liability under the Act—and he admitted that he knew that he could have the £1 a week if he chose to take it. The man's union desired that the employers should sign a particular form of agreement which they sent for that purpose. Speaking for himself, he thought it quite clear that the employers were at liberty to say "We are not required by the Act to sign an agreement in that form, and we will not." That was the origin of the dispute. The employers now asked the Court to go farther, and to say that an admission of liability to pay all compensation to which a man was entitled under the provisions of the Act in its widest terms left nothing as to which a question could arise. In this case the Court was not left merely with the offer of the £1, and so on. There was correspondence, and that correspondence not only did not support the implied agreement, but in terms negated it. The matter stood thus: The workman tendered a printed agreement providing for compensation during total or partial incapacity. The employers were at liberty to say they would not sign it. Now the correspondence left it perfectly clear that what the workman wanted was an unconditional admission of liability, not merely during total incapacity, but during partial incapacity, subject, of course, to review, and that the employers had deliberately said they would not give it except so far as it was contained in their general answer, "We have admitted liability; there is no question." His lordship then read the correspondence, and said it was perfectly clear there was a dispute between the parties. The workman said, "I am entitled to full compensation, and your liability extends to total and partial incapacity"; the employers said, "We will not give you any such admission. We have admitted generally under the Act." There was, therefore, a dispute between the parties competent to go to the county court judge for his award. He took the view that he had jurisdiction, and made an award. In his lordship's opinion that was a right view, and this appeal failed.

BANKES and WARRINGTON, L.J.J., gave judgment to the same effect.—COUNSEL, for the appellants, *Rigby Swift*, K.C., and *Edgar Meynell*; for the respondent, *Shakespeare and Barrett Leonard* (for *T. Richardson*, serving with His Majesty's forces). SOLICITORS, *Crossman, Pritchard, & Co.*, for *Dees & Thompson*, Newcastle; *Versey W. Cole*, for *J. F. Latimer*, Darlington.

[Reported by *EDMUND REID*, Barrister-at-Law.]

## High Court—Chancery Division.

**LAW v. HARRIGAN.** Peterson, J. 11th, 14th, 15th, and 16th May.

MISTAKE—SEPARATION DEED SET ASIDE—INVALID MARRIAGE.

*A deed of separation based on an invalid marriage is void. Galloway v. Galloway* (1914, 30 T. L. R. 531) followed.

This was an action to set aside a deed of separation on the ground that it was entered into under a mistake of fact, the defendant's first husband being supposed to be dead when he was in fact alive. The plaintiff went through the ceremony of marriage with the defendant in 1912, believing her to be a widow, and she was described as such in the certificate of marriage. On 11th September, 1913, the separation deed was executed which formed the subject-matter of this action, and the plaintiff agreed by it to allow the defendant £300 a year. In October the plaintiff discovered that the defendant's husband was still alive.

PETERSON, J., after stating the facts, and coming to the conclusion on the evidence that when the deed was entered into neither party believed that the defendant's first husband was alive, said: The deed is obviously based on the existence of a valid marriage, and, having come to the conclusion of fact at which I have arrived, there is no alternative but to apply the decision in *Galloway v. Galloway* (supra) and hold that the deed is void.—COUNSEL, *Hughes*, K.C., and *A. C. Nesbitt*, SOLICITORS, *Hancock & Willis*, for *Tanner & Clarke*, Bristol; the defendant appeared in person.

[Reported by *L. M. MAY*, Barrister-at-Law.]

**Re BROWN. LEEDS v. SPENCER.** Younger, J. 11th and 16th May. WILL—CONSTRUCTION—WORDS OF FUTURITY—"SHALL"—SUBSTITUTIONAL GIFT—CHILD DEAD AT DATE OF WILL, LEAVING CHILDREN.

Where there was a gift of £500 to each of the six children of a deceased daughter referred to in the will as being dead, and the gift of residue equally among the testator's children contained a substitutionary clause for the children of the testator's children to stand in the shoes of their deceased parents, and the words in that substitutionary proviso were words of futurity.

Held, (1) that the words of futurity must not be read in this case as applying to the past so as to include these six children of the deceased daughter; (2) that there is not sufficient reason in this case for importing this benevolent construction such as existed in the case of *Re Williams* (1914, 2 Ch. 61).

This was an adjourned summons to determine whether the children of a child dead at the date of the will took under a substitutional gift or not. The testator, who had married twice, died in 1874, leaving £500 to each of the six children of his deceased daughter, Elizabeth Morey, and referring to her as being dead. He had eight children by his first marriage, seven alive at the date of the will, all having attained twenty-one, and the eighth, E. Morey, dead, leaving six children, all then living. By his second marriage the testator had six children, all of whom were alive at the date of his will. He had several grandchildren at the date of his will, but none had attained twenty-one. The residuary gift giving rise to the summons was as follows: "Unto and equally amongst all my children, who, being a son or sons, have attained, or shall hereafter attain, the age of twenty-one years, or, being a daughter or daughters, have attained or shall hereafter attain the age of twenty-one years, or shall marry, in equal shares; provided always that if any child of me shall die in my lifetime leaving a child or children who shall survive me, and, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one equally between them) the share which his, her or their parents would have taken of, and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years."

YOUNGER, J., after stating the facts, said: In the original gift the word "shall" plainly relates to the future, and to the future only. Turning to the proviso and continuing to attribute to the word "shall" the same sense of futurity, the testator in terms appears to be disposing only of the share of a child who should thereafter die in his lifetime by way of substitutional gift in favour of his or her grandchildren. That is the natural construction of the language, and, having regard to the pecuniary legacies given to the children of Elizabeth Morey, leads to a fair and equitable division of his property between his children, leaving no branch unprovided for. The construction under which words of futurity are read as applying to the past so as to include a child dead at the date of the will is benevolent, and the limits of its proper application are clearly defined in *Goringe v. Mahlstadt* (1907, A. C. 225), and is one not to be resorted to without sufficient reason. Sufficient reason is one sufficient reason as is found in *Re Williams* (1914, 1 Ch. 219 and 2 Ch. 61), which is the strongest case in favour of that construction. The circumstances in *Re Williams* are quite different from those existing in the present case, and I do not feel compelled by that authority to place upon the words of this will a construction dif-

ferent from that which they would appear naturally to bear. I accordingly make a declaration that the children of Elizabeth Morey are not entitled to share in the residue.—COUNSEL, *Pattinson*; *Austen-Cartmell*; *G. T. Simonds*; *Sheldon*. SOLICITORS, *Lovell, Son, & Pitfield*, for *Nantes & Maunsell*, Bridport.

[Reported by *L. M. MAY*, Barrister-at-Law.]

**Re GOLDSCHMIDT (LIM.).** Younger, J. 25th May.

WAR—ENEMY-CONTROLLED COMPANY—BUSINESS OF COMPANY DIRECTED TO BE WOUND UP—CONTROLLER—CALLS—"ASSETS OF THE BUSINESS"

—TRADING WITH THE ENEMY AMENDMENT ACT, 1916 (5 & 6 GEO. 5, c. 105), s. 1, SUB-SECTION 3.

The Board of Trade has no power to invest a controller appointed by them under the Trading with the Enemy Amendment Act, 1916, with power to make calls upon the shareholders of the business which he is winding-up under the Act for the purpose of putting himself in funds to discharge the debts of the business. The uncalled capital of such a company is not "assets of the business" within section 1, sub-section 3, of the said Act.

*Re Kastner & Co. (Limited)* (1917, 1 Ch. 390) applied.

Under the Trading with the Enemy Amendment Act, 1916, the Board of Trade in June, 1916, appointed a controller of the business of the above-named company, carried on in the United Kingdom for the purpose of winding-up such business. The order of the Board of Trade purported to give to the controller power to settle a list of contributories, and to make calls and to adjust the rights of contributories *inter se*. The moneys which the controller had in hand were less than the debts of the business. There was, however, certain uncalled-up capital of the company, and in April, 1917, the controller made a call on two enemy shareholders for the amounts unpaid on their shares. The Public Trustee had certain property in his hands of these two enemy shareholders as custodian, and the controller took out a summons that the Public Trustee, as such custodian, should pay to the controller the amounts of such calls. The point to be decided was whether the call was valid.

YOUNGER, J., after stating the facts, said: Applying the principles of my decisions in the cases of *Re Hagelberg Aktien Gesellschaft* (1916, 2 Ch. 503) and *Re Kastner & Co. (Limited)* (1917, 1 Ch. 390), and upon the construction of section 1, sub-section 3, of the Trading with the Enemy Amendment Act, 1916, I hold that "assets of the business" do not include a company's uncalled capital, and that the Board of Trade cannot invest the controller with power to make a call upon the shareholders of the company for the purpose of putting himself in funds to discharge the debts of the business, and I hold that the call is invalid.—COUNSEL, *Gore-Brown*, K.C., and *Sheldon*; *Austen-Cartmell*. SOLICITORS, *Sanderson, Adkin, Lee, & Eddis*; Solicitor to the Board of Trade.

[Reported by *L. M. MAY*, Barrister-at-Law.]

**Re FR. MEYERS SOHN (LIM.).** Younger, J. 25th May.

WAR—ENEMY-CONTROLLED COMPANY—CONTROLLER—SURPLUS ASSETS—TRADING WITH THE ENEMY AMENDMENT ACT, 1916 (5 & 6 GEO. 5, c. 105), s. 1, SUB-SECTION 3.

The Board of Trade has no power to direct a Controller appointed under the Trading with the Enemy Amendment Act, 1916, to distribute surplus assets of the business which he controls among the company's members.

*Re Goldschmidt (Limited)* (supra) applied.

This was a summons by the controller of a company appointed by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, asking the question whether the company, not being in liquidation, the assets in his hands, so far as they were not required for payment of the debts of the business and the costs of the winding-up, were divisible amongst the shareholders, or ought to be held for or on account of the company or its assigns. The facts were these: In March, 1916, the business was ordered by the Board of Trade to be wound up and a controller appointed. The Board of Trade purported to give the controller power to settle the list of contributories, make calls, and adjust the rights of contributories *inter se*. The company had only one business, and its share capital consisted of 5,000 preference shares and 55,000 ordinary shares of £1 each. The assets were partly in England and partly in Germany, and there were liabilities to English and German creditors. The British assets had all been realized, and, after payment of all the creditors other than alien enemy creditors, there was a sum left over about equal to the German assets of the business not in the controller's hands. All the preference shares were held by a German resident in Germany, and a considerable number of the ordinary shares were held by persons resident in Germany. A large sum would ultimately be available in respect of the surplus assets, and the controller wished to know what he should do.

YOUNGER, J., after stating the facts, said: Much of the reasoning in the case which I have just decided of *Re Th. Goldschmidt (Limited)* (supra) applies to the solution of the present case, and I hold that under the concluding words of section 1, sub-section 3, of the Trading with the Enemy Amendment Act, 1916, the Board of Trade has no power to direct distribution of the surplus assets among the company's members.—COUNSEL, *Gore Browne*, K.C., and *Wilford Hunt*; *Austen-Cartmell*. SOLICITORS, *Sanderson, Adkin, Lee, & Eddis*; Solicitor to the Board of Trade.

[Reported by *L. M. MAY*, Barrister-at-Law.]

**CHEATER v. CATOR.** Div. Court. 23rd May.

LANDLORD AND TENANT—POISONING OF ANIMALS BY OVERHANGING YEW TREES—TREES OVERHANGING INTO DEMISED LAND.

The plaintiff took land from the defendant on a yearly tenancy in 1914. In 1915 a mare belonging to the plaintiff was poisoned by eating from yew trees overhanging into the land demised from the land in the occupation of the defendant.

Held, per Coleridge, J., that as the yews had grown within reach of animals in the demised land since the lease, the defendant was liable; per Rowlatt, J., that the yews having overgrown the demised land of the time of the lease, the defendant was not liable.

Erskine v. Adeane (1873, 8 Ch. 756; 21 W. R. 802) discussed.

Appeal by plaintiff from the Cirencester County Court. Plaintiff was the tenant on a yearly tenancy of a farm belonging to the defendant. Part of the land included in the lease, which was made in December, 1914, abutted on other land belonging to and in the occupation of the defendant. In the grounds in the occupation of the defendant there was a shrubbery, in which yew trees were growing. Between this shrubbery and a field included in the lease to the plaintiff there was a fence. The plaintiff kept a mare in this field, and on the morning of 5th January, 1915, the mare was found dead. It was not disputed that she had died from yew poisoning. The branches of several yew trees were found to have been overhanging the fence within easy reach of the mare. The plaintiff sued the defendant in the county court for negligence in allowing the branches of the yew trees to overhang the plaintiff's land and for negligently omitting to repair the fence dividing the plaintiff's ground from the defendant's. The plaintiff stated in his evidence that he did not know that yew trees were poisonous, that he did not know the yew trees were there when he took the farm, and that if he had known they were overhanging he should have asked to have them cut back, because it would have been trespassing. The defendant did not call any evidence. The county court judge found as facts that the boughs of the yew trees growing on the defendant's land overhung the demised premises, and that the plaintiff's mare died as the result of eating from the overhanging boughs, and he gave judgment for the defendant.

COLERIDGE, J., in his judgment dealing with the facts, said the trees were quite harmless when the plaintiff took the farm, and the branches were not within reach of horses in the field. In the case of adjoining owners or occupiers, where there was no privity of contract, well known law had been settled by the cases of *Crouchurst v. Amersham Burial Board* (1875, L. R. 4 Ex. Div. 5); *Smith v. Giddy* (1904, 2 K. B. 448); and *Ponting v. Noakes* (1894, 2 Q. B. 281, 42 W. R. 506). If this case were one between owner and owner, the defendant would unquestionably be liable; but the question here is whether the landlord is responsible, there being privity of contract between him and the plaintiff. It was urged for the plaintiff that the landlord should be under at least an equal duty to his tenant as he would be to a neighbouring landowner. On the other hand it is said the doctrine *caveat emptor* applies, and that unless he has a warranty against such things the tenant must run the risk. *Erskine v. Adeane* (1873, L. R. 8 Ch. 756, 21 W. R. 802) is cited for this. That case decided that there is no implied warranty by the lessor, but the case was also put on the ground of negligence, and this point was discussed, though it was not in issue. Mellish, L.J., said quite clearly that when a tenant takes a farm he must look and judge for himself what the state of the farm is; *caveat lessee* applies. These are *obiter dicta*, and we are not actually bound by them, but except for them I myself should have held that the action lay in this case, as I cannot draw any distinction between the duty of the landlord to the tenant and his duty to others. I should say the *dicta* would only apply if, at the time the tenant took the lease, the yew trees overhung the lessee's land. The *dicta* do not necessarily mean more than that the lessee must guard himself *rebus sic stantibus* at the time the lease was taken. I am not disposed to extend this meaning of the *dicta*, and I hold that what was laid down in *Erskine v. Adeane* was only referable to the state of the premises at the time when the lease was granted. I think the plaintiff ought to succeed.

ROWLATT, J., in a dissenting judgment, said that in the present case, when the lease was taken the yew branches already overhung the fence. His view of it was that the tenant took his chance, and the *dicta* of Mellish, L.J., applied: *Erskine v. Adeane* (*supra*) was not distinguishable. [As a consequence of this difference of opinion the appeal stood dismissed.]—COUNSEL, *Vachell, K.C.*, and *Clements*, for the appellant; *Rayner Goddard*, for the respondent. SOLICITORS, *Helder, Roberts, & Co.*, for *Frank Treasure*, Gloucester; *Peacock & Goddard*, for *Sewell & Rowling*, Cirencester.

[Reported by G. H. KNOTT, Barrister-at-Law.]

In the House of Commons on Monday, the Chancellor of the Exchequer, replying to Mr. King, said: In order to co-operate fully with the Government of the United States in the conduct of the war, Missions representing a number of Government Departments have been for some time in America. It is necessary that there should be someone at the head of these Missions to combine and co-ordinate their activities, and Lord Northcliffe has undertaken to do this work, which is not in any sense diplomatic.

## New Orders, &amp;c.

## War Orders and Proclamations, &amp;c.

The *London Gazette* of 8th June contains the following:—

1. An Order in Council, dated 8th June, varying the Statutory List under the Trading with the Enemy (Extension of Powers) Act, 1916. Additions are made as follows:—Argentina, Paraguay and Uruguay (7); Bolivia (2); Brazil (9); Chile (6); Columbia (3); Denmark (7); Ecuador (1); Morocco (2); Netherlands (6); Netherlands East Indies (15); Norway (1); Peru (3); Spain (6); Sweden (2); Venezuela (4). There are also a number of removals from and variations in the list, and the usual notices are appended (*ante*, p. 322). A List, consolidating all previous Lists, was published on the 27th April, 1917 (the Consolidating List No. 25A), which, together with Lists Nos. 26 & 27 of 11th and 25th May, 1917, respectively, and the present List, contains all the names which up to this date are included in the Statutory List.

2. A Foreign Office (Foreign Trade Department) Notice, dated 8th June, 1917, that additions or corrections to the List published as a supplement to the *London Gazette* of 18th May, 1917, of persons to whom articles to be exported to China may be consigned.

3. A Notice, dated 7th June, that appointments have been made to the Appeal Tribunals under the Military Service Acts as follows:—County of Northumberland (1); Administrative County of West Sussex (1).

4. A Notice that Orders have been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1916, requiring two more businesses to be wound up, bringing the total up to 456.

5. An Army Council Order, dated 5th June (printed below), as to dealing in Basils and Sheep Pelts.

6. A Notice, dated 7th June, that the following Orders have been made by the Food Controller:—

The Sugar (Restriction) Order, 16th March, 1917 (*ante*, p. 355), as amended by the Sugar (Restriction) Orders Nos. 2 and 3, 1917.

The Cheese (Requisition) Order, 29th May, 1917 (*ante*, p. 529).

The Beans, Peas and Pulse (Retail Prices) Order, 29th May, 1917 (*ante*, p. 529).

The *London Gazette* of 12th June contains the following:—

7. A translation of a new list of absolute and conditional contraband

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issued by the Italian Government in April, 1917. It contains sixty-one items of absolute and nineteen of conditional contraband.

8. A translation of a further Italian Decree, dated 29th April last, and published in the Italian Official Gazette of 12th May, relating to goods of Enemy Ships in Italian ports (see *ante*, p. 509, where "or" is erroneously printed for *et*).

9. A Notice that Orders have been made by the Board of Trade, under the Trading with the Enemy Amendment Act, 1916, requiring two more businesses to be wound up, bringing the total to 458.

10. A Notice, dated 11th June, that the following Order has been made by the Food Controller:—

The Meat (Sales) Order, 31st May, 1917 (printed below).

11. An Admiralty Notice to Mariners, dated 9th June (printed in part below).

## Basils and Sheep Pelts.

### ARMY COUNCIL ORDER.

War Office,

5th June, 1917.

In pursuance of the powers conferred upon them by the Defence of the Realm Regulations, the Army Council do hereby order as follows:—

1. No person shall without a permit issued by or on behalf of the Director of Army Contracts, purchase, sell, or make or take delivery of, or payments for, any Basils or Sheep Pelts at a price exceeding the average price received by the seller thereof for Basils or Pelts of corresponding qualities and descriptions during the month ending 31st May, 1917.

2. No person shall without a permit issued by or on behalf of the Director of Army Contracts, sell any Basils or Sheep Pelts otherwise than in exchange for a guarantee by the purchaser thereof that he intends to put the said Basils or Pelts into work for the purposes of a Government contract or order.

By Order of the Army Council,

R. H. BRADE.

## Food Order.

### The Meat (Sales) Order, 1917.

In exercise, &c., the Food Controller hereby orders that, except under the authority of the Food Controller, the following provisions shall be observed by all persons concerned:—

#### I.—SALES OF FAT CATTLE.

1. *Dealer to sell only for slaughter.*—A person who has bought any fat cattle (hereinafter called the dealer) shall not resell the same except to a person (hereinafter called the permitted buyer) who gives a written undertaking that he is buying such cattle for slaughter, and the permitted buyer shall not sell the fat cattle bought but shall cause the same to be slaughtered within fourteen days of the date of his purchase.

2. *Written undertaking.*—When the resale was made to the permitted buyer in a cattle market, the written undertaking shall be made and entered by the permitted buyer in a book to be kept for the purpose by the market authority for such market, and in any other case shall be in the form set forth in the schedule and shall be sent by the dealer to the market authority of the cattle market nearest to the place where the sale was made.

3. *Slaughter.*—The permitted buyer shall within seven days of the cattle being slaughtered forward particulars of the place and time of such slaughter to the market authority to whom the written undertaking was given or sent.

4. *Powers and duties of Market Authority.*—Where any cattle are sold in the market, the determination of the market authority whether such cattle are or are not fat cattle shall be conclusive for all purposes, and the market authority shall not permit any fat cattle to be moved from the market until the necessary written undertaking has been given.

5. *False statements.*—A person shall not make any false statement in the written undertaking or particulars referred to in this part of this Order.

6. *Duties of the Market Authorities in relation to undertakings.*—The market authority shall retain all written undertakings and particulars received by them, and shall inform the Food Controller, or, as he may direct, of any case where it appears to them that the provisions of this part of this Order have not been complied with.

#### II.—SALES OF DEAD MEAT.

7. *Application of this part.*—This part of this Order shall apply on the occasion of any sale of dead meat, by or on behalf of a person (hereinafter called the salesman) who has bought such meat, or has received for sale on commission meat previously bought as dead meat:

Provided that:—

(a) Nothing in this part shall apply to meat imported by the Board of Trade or to a retail sale of meat; and that

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G. H. MAYNE, Secretary.

(b) Clauses 8, 9 and 10 shall not apply on the occasion of a sale of imported meat by the first importer thereof.

8. *Salesmen to sell to retail butchers.*—The salesman shall not sell any part of such meat except to a retail butcher buying for retail sale or to a person buying for consumption.

9. *Price for Carcases.*—The salesman shall not sell any carcase, side or quarter at a price more than 3d. a stone above the cost to him of the meat sold, or in the case of meat consigned to him for sale on commission at more than 3d. per stone above the price at which the meat was bought by the consignor, together with cost of transport to the place of sale.

10. *Price for joints.*—The salesman shall not sell a carcase, side or quarter cut into smaller joints at such prices as will in the aggregate make the total amount charged by him for the meat sold more than 1d. a stone above the price at which the like carcases, sides or quarters are on the same day being sold or offered for sale.

11. *Price for joints by wholesale butchers and meat importers.*—No wholesale butcher or meat importer shall sell a carcase, side or quarter cut in smaller joints at such prices as will in the aggregate make the total amount charged by him for the meat sold more than 1d. per stone above the price at which the like carcases, sides or quarters are on the same day being sold or offered for sale.

12. *Burden of proof.*—In any proceedings for a breach of the provisions of this part of this Order, the burden of proving the amount of the price at which meat was bought and cost of transport shall be upon the person charged.

13. *Statement to be given to Market Authority.*—Every person selling meat in a market shall furnish to the market authority, as and when required by the market authority, a statement showing classification and weight of meat sold by him in such market and prices realised.

#### III.—GENERAL.

14. *Offers, &c.*—A person shall not buy, sell or deal in or offer to buy, sell or deal in, any cattle or meat in contravention of any of the provisions of this Order.

15. *Records.*—All persons concerned shall keep such records of cattle bought, sold and slaughtered, and meat bought and sold, prices paid and charged and the names of sellers and buyers as are necessary for the purpose of ascertaining whether or not the provisions of this Order are being complied with, and such records shall at all times be open to the inspection of the Food Controller or of any local authority or market authority.

16. *Display of Order.*—The market authority of a market shall cause copies of this order to be kept affixed in some conspicuous place in such market.

17. *Interpretation.*—For the purpose of this Order:—

"Market" shall include a fair.

"Market authority" shall mean any person, company or corporation having the control or management of any market or in receipt of tolls in respect thereof.

"Cattle" shall include, in addition to cattle usually so called, ram, ewe, wether, lamb, and swine.

"Meat" shall mean any meat obtained from cattle as defined.

"Sale" shall include barter.

"Stone" shall mean a stone of 8 lbs.

18. *Penalty.*—If any person acts in contravention of this Order, or aids or abets any other person in doing anything in contravention of this Order, that person is guilty of a summary offence against the Defence of the Realm Regulations, and if such person is a company every director and officer of the company is also guilty of a summary offence against those regulations unless he proves that the contravention took place without his knowledge or consent.

19. *Title and commencement of Order.*—(a) This Order may be cited as the Meat (Sales) Order, 1917.

(b) Part I. of this Order shall come into force on the 11th June, 1917, and Part II. shall come into force on the 4th June, 1917.

DEVONPORT,  
Food Controller.

31st May, 1917.

#### SCHEDULE.

I declare that the animal [a] described at the foot of this undertaking

was [were] bought by me for slaughter and will be slaughtered within 14 days hereof.

It is intended that such animal shall be slaughtered at .....

Signature .....

Address .....

Date .....

Class of Animal.	Name of seller.	Address of seller.	Price.

[Memorandum (see ante, p. 529) that the Local Authorities (Food Control) Order (No. 1) 1917 (ante, p. 496) is to apply to the above order.]

With reference to the above Order the following Memorandum has been issued:—

As some misapprehension seems to exist as to the operation of several of the clauses of the Meat Sales Order recently issued by the Food Controller, it should be pointed out that the object of the Order is to eliminate as far as possible, both as regards Live Cattle and Dead Meat, all unnecessary intermediate transactions between the farmer and the consumer.

With regard to Live Cattle, one sale only by a dealer is permitted. Where a dealer buys cattle he may take those cattle to any market and resell them, but only to a buyer who gives an undertaking that he will slaughter them.

If a dealer who brings cattle to a market acts as agent for a farmer, a sale of such cattle is a sale by the farmer, and the buyer may be another dealer, who can, however, sell only for slaughter.

A wholesale butcher may sell to an intermediary distributor, who, in his turn must only sell to a retailer or consumer.

With regard to meat consigned for sale to a wholesale market which has been previously bought as dead meat, the consignor may add to the price paid by him the profit permitted by the Order, the cost of transport and the usual commission.

5th June, 1917.

And in connection with the above Order, the following letter has been sent by the Ministry of Food to market authorities in the United Kingdom:—

"I am directed by the Food Controller to refer to the Meat (Sales) Order, 1917, and to inform you that it has been decided to confer upon your market authority the following licensing power in relation to purchases of fat cattle at your market by recognised distributing dealers.

"In cases where your market authority is satisfied that any purchase of fat cattle at your market is made by a recognised distributing dealer, and that such cattle were bought by the vendor from the farmer or his agent, your market authority is authorized to license such distributing dealer to resell the same at another market within seven days of his purchase. Such licence may be granted only subject to the following conditions:—

"(1) The licensed buyer is to name to your market authority the market in which he proposes to sell the cattle and must sell the cattle only in such market and within seven days of his purchase.

"(2) The time for slaughter of the cattle may be any time within 14 days of the resale by the licensed buyer.

"I am to ask you to bring the terms of this authority to the notice of recognized cattle dealers trading in your market and to make the appropriate entries in your books of all sales in respect of which the authority hereby conferred is exercised. And, further, I am to ask you to inform this Ministry on the 1st July of the names of the persons to whom any licences under this authority have been granted.

"I am to point out that any licensed buyer who fails to comply with the conditions of his licence will be guilty of a summary offence against the Defence of the Realm Regulations."

9th June, 1917.

## Admiralty Notice to Mariners.

No. 581 of the year 1917.

### SPECIAL INSTRUCTIONS TO MERCHANT VESSELS.

(1) Procedure for Visit and Search of Vessels by H.M. Ships.

Former Notice.—No. 555 of 1916.

In view of the danger of H.M. Ships closing vessels, apparently Neutral, British or Allied traders, but which are in reality German raiding cruisers, it is necessary to adopt a special Boarding procedure as a measure of precaution. This procedure has been notified to all Neutral and Allied Powers.

When it is desired to put into force the special Boarding procedure it will be as follows:—

A red pendant of a specially large size will be hoisted by the man-of-war exercising the right of visit and search. The hoisting

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of this pendant will be accompanied by the firing of a rocket. This will signify that the merchant ship is to close the boat lowered by the man-of-war, whether the man-of-war remains in the vicinity of the boat or not.

(2) Regulations with regard to Vessels' Lights.

Former Notice.—No. 1143 of 1916; hereby cancelled.

[Prohibition of electrically-lit lanterns as lights, and restriction on other lights.]

(3) War Instructions for Merchant Vessels.

Notice is hereby given that, under the Defence of the Realm (Consolidation) Regulations, 1914, the following Order has been made by the Lords Commissioners of the Admiralty and is now in force:—

The Orders contained in Admiralty War Instructions for British Merchant Ships or in any instructions or advice, confidential or otherwise, issued or given to Masters of vessels by British or Allied Naval Officers, or by other duly authorized Officers or Officials, as to routes to be taken and other precautions to be observed to avoid capture or destruction by the enemy, are to be observed even when they are in conflict with the provisions of the Regulations for preventing Collisions at Sea, and every vessel observing such regulations, instructions or advice shall be deemed to be taking measures to meet "special circumstances" within the meaning of Article 27 of the Regulations for preventing Collisions at Sea.

### Note.

Section (1) of this Notice is a re-publication of Notice No. 555 of 1916. Section (2) of this Notice is a revision of Notice No. 1143 of 1916.

### Caution.

Sections (2) and (3) of this Admiralty Notice to Mariners are issued under the provisions of the Defence of the Realm (Consolidation) Regulations, 1914, and failure to comply strictly with the directions contained in them will constitute an offence against those Regulations.

9th June, 1917.

## Societies.

### Solicitors' Benevolent Association.

The usual monthly meeting of the directors of this association was held at the Law Society's Hall, Chancery-lane, London, on the 13th inst., Mr. C. G. May in the chair, the other directors present being Messrs. F. E. F. Barham, E. R. Cook, T. S. Curtis, A. Davenport, Thomas Dixon (Chelmsford), W. E. Gillett, C. Goddard, L. W. North Hickey, R. C. Nesbitt, and W. Melmoth Walters.

£570 was distributed to poor and deserving cases, two new members were admitted, and other general business transacted.

### The Law Association.

The usual monthly meeting of directors was held at the Law Society's Hall on Thursday, the 7th inst., when Mr. Nugent Chaplin was appointed chairman of the board for the year now commencing, and took the chair. The other directors present were Mr. E. E. Bird, Mr. S. H. Hargrove, Mr. P. E. Marshall, Mr. Mark Waters, Mr. W. M. Woodhouse, and the secretary, Mr. E. E. Barron. £625 was voted in renewal of the grants of twelve members' cases, and the further sum of £235 in regard to ten non-members' cases, making a total of £860 for the relief of deserving cases. A finance committee was appointed, and other general business transacted.

### The Union Society of London.

The Society met at the Middle Temple Common Room on Wednesday, 13th June, 1917, at 8 p.m. The subject for debate was: "That titles should be awarded according to merit, and that the present system of patronage does not work satisfactorily." Opener, Mr. Elmore; opposer, Mr. Shears. Motion carried.

### University College, London.

A public Rhodes lecture will be delivered at University College by the Right Hon. Sir George Houston Reid, G.C.B., M.P., on Thursday, 21st June, at 5 p.m., on "The Influence of the New World upon the Old World's Parliaments." The chair will be taken by the Right Hon. Walter Long, M.P., H.M. Secretary of State for the Colonies. This lecture will be open to the public without fee or ticket. Tickets for reserved seats can be obtained on sending a stamped addressed envelope to the secretary of University College, London, Gower-street, W.C.

## The Attorney-General on Proportional Representation.

In the House of Commons, on Tuesday, when the proposal to incorporate the principle of proportional representation was defeated by 149 to 141, Sir F. E. Smith, says the *Times*, said that the main objection advanced against proportional representation had come from those who feared it would be unintelligible and impracticable. Those, however, who had followed the experimental elections in proportional representation knew that it was not only intelligible, but very practicable. No one who had ever criticized the system had ever held enough to asset that it would not provide for a more exact representation of the views of constituencies than was obtainable under any alternative system. The abuses of our present system were notorious. In any great city where all the representation had been in the hands of one party, those who were officially associated with that party would be found on the side that was against proportional representation. That was only human nature. But they had not been so stupid as to ignore the fact that there was in Liverpool a very strong Liberal minority who never had any proper representation in Parliament. The system now recommended had in fact been adopted and was to-day in operation in democratic communities. It was time, therefore, that those who had hitherto opposed it on the ground of its impracticability should face the fact that it had worked so well and smoothly elsewhere. There was much in the proposals to which Unionists were strongly opposed; but taking the proposals as a whole and the fact that an agreement had been reached over that range of topics, he made up his mind to abandon his objection to the political enfranchisement of women on condition that the House accepted the proposals as a whole. To him that course represented a great concession, and one part of the findings which reconciled him to it was the proposal relating to proportional representation, which was recommended unanimously, while the adoption of woman suffrage was recommended only by a majority. He warned the House that to rule out the scheme of proportional representation would be to strike a death blow at the whole superstructure of the great concordat.

## Companies.

### The Solicitors' Law Stationery Society (Limited)

The twenty-eighth annual general meeting of the Solicitors' Law Stationery Society (Limited) was held at the head offices of the society on 24th May, Mr. W. Arthur Sharpe in the chair.

The directors' report stated that the sales amounted to £67,442, against £64,716 in 1915, and the net profit to £4,703, against £3,508 in 1915—an increase of £1,195. The directors recommended a dividend at the rate of 8 per cent., a bonus to customers, and a distribution under the profit-sharing scheme amongst the staff in accordance with the articles of association, £2,000 be added to the reserve, and that the balance of profit (£2,266) be carried forward.

The chairman, in moving the adoption of the report and accounts, referred to the appointment of Mr. Monier-Williams as a director in the place of the late Mr. Adams, and to the loss the staff had sustained through eight members being killed at the front and five being reported missing. He stated that 125 of the staff were serving with the colours, as against ninety last year. He mentioned that Mr. Cahuac, the general manager, had completed twenty-five years' service with the company, and called attention to the great progress the society had made. He regretted that the past year had not been a record one, and hoped that the progress in future would be as marked as in last year.

The report and accounts were adopted, the retiring directors, Sir Richard Melvill Beachcroft and Mr. William Arthur Sharpe, were re-elected, and the meeting terminated with a vote of thanks to the chairman and staff.

## Obituary.

### Mr. James Chambers, K.C.

We regret to record that Mr. JAMES CHAMBERS, K.C., Solicitor-General for Ireland, died on Monday night in a private hospital in Dublin. Mr. Chambers, who represented South Belfast in Parliament since 1910, was the son of Mr. Joseph Chambers, of Darkley, Co. Armagh. After Sir James Campbell was appointed Lord Chief Justice of Ireland Mr. Chambers became Solicitor-General in the room of Mr. James O'Connor, who was promoted to be Attorney-General.

Mr. Chambers was called to the Irish Bar in 1886; he took silk in 1902, and was elected a Bencher of King's Inns, Dublin, in 1905.

*Qui ante diem perit,  
Sed miles, sed pro patria.*

### Captain Eric A. O. Durlacher.

Captain ERIC ALEXANDER OGLVIE DURLACHER, M.C., Worcestershire Regiment, killed while leading his company on 20th May, aged twenty-two, was the only son of Mr. Alexander Percy Durlacher, A.M.I.C.E., architect and surveyor, of New Bridge-street, E.C. 4. He was educated at St. Benedict's, Ealing, St. Augustine's, Ramsgate, and St. Paul's School, and was articled to Mr. E. J. Bellord, 8, Waterloo-place, S.W. At the outbreak of the war he joined the 1st Public Schools Battalion, Royal Fusiliers. In May, 1915, he was selected for a commission in the Reserve of Officers, and was gazetted to the Worcestershire Regiment. He served in the trenches in France from October, 1915, to the end of June, 1916, when he was selected for the Royal Flying Corps. Before completing his course (finding himself unsuited to the work) he was, at his own request, sent back to his battalion, returning to the front on 13th January last. He was subsequently reported wounded, but he remained on duty. He was gazetted acting captain on 17th February, and the Military Cross was conferred on him on 17th April for displaying great courage and initiative in a raid on the enemy's trenches. His C.O. writes of him: "He was an officer in whom I placed implicit reliance. . . . He was killed in the forefront with his men, despite the fact that he was at the time wounded and would not leave the line. . . . He is a very great loss to the battalion."

### Lieutenant Aubrey F. Blackwell.

Lieutenant AUBREY FRANCIS (TONY) BLACKWELL, M.C., R.F.A., who was killed on 2nd June, was the youngest surviving son of the late Thomas Francis Blackwell, of Harrow Weald, and 21, Soho-square, W. Born in 1890, he was educated at Aldro School, Eastbourne, Harrow, and Oriel College, Oxford. At the outbreak of the war he was reading for the Bar, but he obtained a commission in the R.F.A., and proceeded to France in March, 1915. He won the Military Cross for gallant conduct in September, 1916. His colonel writes: "I never wish to command a better soldier than he was; always cheery under all circumstances, fond of his work, loved by his men, brave almost to a fault, and endowed with much more than his share of sound common sense. We all feel we have not only lost a brave and capable officer, but a real friend, whom we all held, and whose memory we shall always hold, in the greatest affection. It has indeed hit us very hard."

### Second Lieutenant R. Vaughan Williams.

Second Lieutenant ROLAND VAUGHAN WILLIAMS, R.F.C., who was accidentally killed while flying in France on 5th June, was the eldest son of Mr. and Mrs. A. H. Williams, of St. Mereyn, Flodden-road, Camberwell, S.E., and was in his nineteenth year. He was educated at St. Paul's School, and was articled to his father, of the firm of Williams & Powell, 276, Camberwell New-road. He joined the Artists' Rifles in September, 1915. A year later he transferred to the Royal Flying Corps, and quickly gained his pilot's wings. He was killed within a week of reaching the front.

In the House of Commons, on the 7th inst., replying to Mr. Trevelyan, who asked whether his attention had been called to the declaration by M. Ribot that he intended, with the approval of the Russian Government, to publish not only the treaties and agreements made, but all the secret documents without exception exchanged between France and Russia, and whether the British Government proposed to take a similar course, Lord R. Cecil said:—I think that if the hon. member will re-read M. Ribot's speech he will see that the President of the French Council of Ministers was referring only to conventions entered into and documents exchanged before the outbreak of the present war, and that it was these papers which his Excellency desired to publish. A similar course of action does not appear necessary in the case of his Majesty's Government, who were bound to Russia only by the Anglo-Russian Convention of 1907, which was made public at the time.

## Legal News.

### Appointments.

SAHIBZADA AFTAB AHMED KHAN, barrister-at-law, has been appointed to be a Member of the Council of India, in succession to Sir Abbas Ali Baig, K.C.I.E., C.S.I. Sahibzada Aftab Ahmed Khan, says the *Times*, belongs to a noble Pathan family, which for generations exercised sovereign rights over Kunjpura (a name meaning the heron's nest), in the Jumna marshes of Karnal. His father was a leading administrator in Gwalor, being a member of the Council of Regency during the minority of the present Maharaja Sindhia, while his elder brother, Sultan Ahmed Khan, had long served that State as Minister of Justice. The Sahibzada studied at Christ's College, Cambridge, and was called to the Bar at the Inner Temple in 1894. Settling in practice at Aligarh, he has faithfully served the Mahomedan Anglo-Oriental College there as a trustee, and has always upheld the noble traditions associated with the name of the founder, Sir Syed Ahmed. He has actively promoted the movement to raise the college to the status of a university, and has shared in the negotiations with Government respecting the draft Bill for the purpose. He was president of the Mahomedan Educational Conference in Calcutta in 1911, when he deplored the Moslem neglect of higher education.

Mr. ROLAND EDMUND LOMAX VAUGHAN WILLIAMS, K.C., has been appointed to be Recorder of Carmarthen in place of Mr. E. W. Milner Jones, who resigned on appointment as Recorder of Merthyr Tydfil.

Mr. HENRY GOUDY, M.A., D.C.L., Regius Professor of Civil Law at Oxford University, has been elected an honorary bencher of Gray's Inn. Professor Goudy's work in jurisprudence is well known. He was editor of the *Juridical Review* for many years, and was also president of the Society of Public Teachers of Law. As an advocate in Scotland he has written on the laws of that country, and he has edited Muirhead's *Private Law of Rome*.

### Changes in Partnerships.

#### Dissolution.

DAVID MATHER BOWIE and JOHN COPESTAKE PORTER, solicitors (Ward, Bowie, Porter & Co.), 7, King-street, Cheapside, London, E.C. June 5. Such business will be carried on in the future by the said David Mather Bowie, under the style of "Ward, Bowie, & Co."

[*Gazette*, June 12.]

### Information Required.

GEORGE COURT, deceased.—Any person having any knowledge of a Will made by GEORGE COURT, of Much Dewsburch, Herefordshire, Builder and Contractor, deceased, who died on the 23rd May, 1917, is requested to communicate immediately with Humphrys and Symonds, Solicitors, Hereford.

### General.

The Chancellor of the Exchequer, replying to a question by Major Godfrey Collins as to the discussion of the expenditure resolution standing in the names of 190 members, said: I am prepared later to give a day for the discussion of this subject, but in view of the pressure of public business I cannot at present fix a date.

Mr. J. Harris Vickery, formerly private secretary to the United States Ambassador in Berlin, speaking at the Aldwych Club on "Eng-

lish Law Reform" on Tuesday, said that he had received a German book which was a remarkable digest of English law. It had been prepared to further those processes of "peaceful penetration" from which the German was reaping a rich harvest when the war broke out, and from which he hoped to reap a further harvest after hostilities. The Germans, having already codified their own law, thought that it was time to codify the English law, not for our benefit, but for their own. The work was begun in 1905, and he received the eleventh volume four months ago. No doubt the enemy had profited by the Napoleonic experience, and the result was that the German code was on the desk of every German business man as part of his ordinary equipment. A discussion followed, in which one of the speakers took the view that Mr. Vickery had not appreciated the elasticity of the law of England, nor had he given credit for reforms in the making and for the codification now in progress.

Mr. Robert Alexander Gillespie, magistrate at the West Ham Police Court, of Plowden-buildings, Temple, left estate of gross value £10,740.

On Monday an Islington grocer was successfully sued at Clerkenwell County Court for 6d. It was alleged that he gave insufficient change to a girl customer. The cashier and a shop assistant said only sixpence was tendered, but the girl said it was a shilling, which she had borrowed. Her evidence was corroborated by the lender and accepted by the judge.

At Bedford, on Monday, says the *Westminster Gazette*, Dennis John Richardson, formerly Kuhlmann, was fined £9 under the National Registration Act for failing to notify his change of address. The Town Clerk, who prosecuted, said defendant, a naturalised German, was the new German master at Bedford Modern School. Defendant, who pleaded negligence, said he was an Italian subject. His father was an Austrian, now living in Germany, and his mother, an Englishwoman, was living at Letchworth.

In the House of Commons, on the 7th inst., replying to a question standing in the name of Mr. W. Thorne, Mr. Kellaway said:—The Ministry has instructed assessors to assess damage caused by the East London explosion for which claims have been made, and their recommendations are examined by the Ministry. It is only in very exceptional circumstances that after an assessor has made a recommendation it has been found necessary to make special inquiries, thus causing delay. Over 11,000 claims have been lodged. Of this number 5,650 have been approved and 5,585 actually paid. Nearly all the claims for personal injury and furniture have been met.

The first meeting was held, on the 7th inst., at Bankruptcy-buildings, of the creditors of Mr. Francis Victor Robinson, solicitor, of Bedford-row, W.C., against whose estate a receiving order was made on 24th May on the petition of a bill discounter. Mr. J. B. Knight, Assistant Official Receiver, who presided, said that the debtor was now a Second Lieutenant in the Army. A statement had not yet been lodged, but the Official Receiver had received notice of claims for £4,412, the property of a settlement, and £3,750 alleged to be due to a client. The debtor had stated his intention of submitting a proposal to his creditors. No resolution was passed, and the case was left in the hands of the Official Receiver.

In the House of Commons, on Monday, the Chancellor of the Exchequer, replying to a question by Mr. Leif Jones as to the daily average of national expenditure for the first ten weeks of the financial year 1917-18, said: As the returns for last week are not available I can only give the figures for the first nine weeks of the financial year 1917-18. In these nine weeks (1st April-2nd June inclusive) the total national expenditure on all services was approximately £496,000,000. This works out at a daily average of £7,884,000. Mr. G. Faber asked whether there was anything exceptional to account for the large increase? The Chancellor of the Exchequer: There are a number of exceptional reasons for this increase, but it is impossible to deal with them by question and answer. Mr. Leif Jones: Is there any hope that

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the future expenditure will be at a less rate? The Chancellor of the Exchequer: I have every reason to hope it will be at a less rate. But, as I said in moving the vote of credit a little time ago, I was not very sanguine that the estimate would not be exceeded. All expenditure is included and not merely expenditure under the vote of credit.

## The Property Mart.

### Forthcoming Auction Sales.

June 19.—Messrs. GODDARD & SMITH, at the Galleries of the Institute of Painters in Oil or Colours, at 3.15 p.m.: Stocks and Shares (see advertisement, back page, this week).

June 21 July 17.—Messrs. DANIEL SMITH, OAKLEY & GARRARD, at the Mart: Freehold Estates, &c. (see advertisement, back page, June 2).

June 21.—Messrs. H. E. FORSTER & CRANFIELD, at the Mart: Reversions, &c., and Freehold Properties (respectively) (see advertisement, back page, June 9).

June 25.—Messrs. Wm. HOUGHTON & Co., at the Mart, at 2: Freehold Ground Rents (see advertisement, back page, this week).

June 27, 28.—Messrs. HUMBERT & FLINT: Two big Estates at Coventry and Tamworth (respectively), at 2 (see advertisement, page III., June 2).

## Court Papers.

### Supreme Court of Judicature.

#### ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. Justice NEWELL.	Mr. Justice SYNGE.
Monday June 18	Mr. Leach	Mr. Goldschmidt	Mr. Borer	Mr. Syngé
Tuesday ... 19	Church	Leach	Goldschmidt	Bloxam
Wednesday ... 20	Farmer	Church	Leach	Borer
Thursday ... 21	Jolly	Farmer	Church	Goldschmidt
Friday ... 22	Syngé	Jolly	Farmer	Leach
Saturday ... 23	Bloxam	Syngé	Jolly	Church

  

Date.	Mr. Justice SARGANT.	Mr. Justice ASHBURY.	Mr. Justice YOUNGER.	Mr. Justice PETERSON.
Monday June 18	Mr. Bloxam	Mr. Jolly	Mr. Farmer	Mr. Church
Tuesday ... 19	Borer	Syngé	Jolly	Farmer
Wednesday ... 20	Goldschmidt	Bloxam	Syngé	Jolly
Thursday ... 21	Leach	Borer	Bloxam	Syngé
Friday ... 22	Church	Goldschmidt	Borer	Bloxam
Saturday ... 23	Farmer	Leach	Goldschmidt	Borer

Crown Office,  
9th June, 1917.

Additional days and places for holding the Summer Assizes, 1917:—

#### NORTH-EASTERN CIRCUIT.

Mr. Justice Coleridge.  
Mr. Justice McCauley.

Monday, June 25, at Newcastle.  
Monday, July 2, at Durham.  
Monday, July 9, at York.  
Monday, July 16, at Leeds.

#### SOUTH-EASTERN CIRCUIT.

Mr. Justice Darling.

Friday, June 15, at Hertford.  
Tuesday, June 19, at Maidstone.  
Wednesday, June 27, at Guildford.  
Monday, July 2, at Lewes.

#### MIDLAND CIRCUIT.

Mr. Justice Rowland.  
Mr. Justice Bailhache.

Tuesday, July 10, at Birmingham.

## Winding-up Notices.

### JOINT STOCK COMPANIES

#### LIMITED IN CHANCERY.

London Gazette.—FRIDAY, June 8.

ANGLO INDIAN INDUSTRIAL IMPROVEMENT CO. LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before July 28, to send their names and addresses, and the particulars of their debts or claims, to Mr. Archibald Yearley, 27, Brazennose-st., Manchester, liquidator.

COFFEY POT CAFE, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before July 9, to send their names and addresses, and the particulars of their debts or claims, to Frederick Thomas Parke Deyes, 51, North John-st., Liverpool, liquidator.

J. MARR WOOD & CO. LTD.—Creditors are required, on or before July 2, to send in their names and addresses, with particulars of their debts or claims, to W. T. Ottewill, 14, Great Marlborough-st., liquidator.

## Creditors' Notices.

Under 22 & 23 Vict. cap. 35.

### LAST DAY OF CLAIM.

London Gazette.—FRIDAY, June 8.

BAMFORD, OSWALD JOSEPH, Doveridge, Derby, Agricultural Engineer June 30 Hawthorn & Son, Uttoxeter  
 BAKER, SAMUEL JOHN, Tunbridge Wells July 9 Snell & Co, Tunbridge Wells  
 BARTLETT, ELLER, Wimborne Minster, Dorset June 18 Luff & Raymond, Wimborne Minster  
 BLOIS, CLARA PALMER, Southwold, Suffolk June 21 Rix & Son, Beccles  
 BROWN, ALFRED WILLIAM, Kingston on Thames July 7 Kingston & Co, Lawrence In  
 BULKLEY-JOHNSON, EMILY HILDITCH, Kew, Surrey July 31 Nash, Strand  
 BUNTING, SARAH, Seaton Carew, Durham July 13 Bell, West Hartlepool  
 BURKE, FREDERICK MOLSON, Leadenhall-st July 23 Madigan & Co, Old Jewry Chambers  
 BUTT, THOMAS, Chilton, Bucks, Farmer July 3 Lightfoot & Lowndes, Thame, Oxon  
 UTLEY, BUTLER, Mansfield, Notts July 30 Smith, Mansfield  
 CAKEHEAD, ELIZABETH, Banbury July 7 Bennett, Banbury  
 CAMPBELL, GEORGE KING, Guildford, Journalist July 9 Boyce, Reading  
 BURKE, FREDERICK MOLSON, Leadenhall-st July 23 Madigan & Co, Coleman at  
 COLLEY, ELIJAH, Southport July 4 Wilmot & Hodge, Southport  
 CONRY, SAMUEL, Bournemouth, Builder July 13 J & W H Druitt, Bournemouth  
 CURTIS, EMMA, Bingley, Yorks July 10 Trenholme, Bradford  
 DAVIS, CHARLES LEOESTER, Watlington on the Naze, Essex July 31 Cripps & Co, Tunbridge Wells  
 DENNY, PETER ARCHIBALD, Carshalton, Surrey, Ship Builder's Agent July 27 Ince & Co, St. Binit Chambers, Fenchurch-st  
 DICKSON, JOHN ALEXANDER WILLIAM, Nelson, New Zealand July 9 Goldard & Co, Clement's Inn  
 DOR, EMMA ANN, Dover July 16 Morris, King William-st  
 ELLERS, FREDERICK WADHAM, Bishop's Down, Tunbridge Wells July 9 Snell & Co, Tunbridge Wells  
 EYRE, JAMES, North Croydon July 12 Robinson & Son, Lincoln's Inn fields  
 FALLOWS, WILLIAM, Middlesbrough June 30 Outhwaite, Middlesbrough  
 FALLOWS, ANNIE, Middlesbrough June 30 Outhwaite, Middlesbrough  
 FLETCHER, THE VEE ROBERT CROMPTON, Archdeacon of Middlebury July 21 Stanton & Sons, Chorley  
 FOOTNER, EMILY AUGUSTA, Andover, Southampton June 25 Talbot, Andover  
 FROST, GEORGE THOMAS, Sheffield July 28 Branson & Son, Sheffield  
 GARRETT, NEWSON DUNNELL, Ramsgate July 15 Taylor & Co, Strand  
 GLENDINNING, JOHN, Cheltenham, Actor July 9 Le Brasseur & Oakley, Carey at  
 GRAHAM, MATILDA, Brighton July 15 Cane, Brighton  
 GREY, ISABELLA, Christon Bank, Northumberland June 16 Wade & Robertson, Alwick  
 GRUNDY, JOHN, Stockport, Mineral Water Manufacturer July 7 Bell & Houghton, Stockport  
 HAMILTON, HELEN BELL CHURCHILL, Eastbourne July 12 Arnold, Eastbourne  
 HEMINGWAY, HENRY EDMUND, Stoke Bishop, Bristol Sept 29 Brown & Co, Old Jewry  
 HENDLEY, THOMAS HOLBEIN, London rd, St John's Wood, CIE July 9 Beachcroft & Co, Theobald's rd  
 HORSFALL, ALFRED, Exmouth July 9 Ayrton & Radcliffe, Liverpool  
 JAMES, BENJAMIN, Sutton Coldfield, Wine Merchant July 10 Phelps & Keeling, Birmingham  
 JONES, JAMES GIBBS, Christchurch, Canterbury, New Zealand July 9 Goddard & Co, Clement's Inn  
 JONES, EYON LLEWELL N, of His Majesty's Ship Indefatigable June 30 Fowl & Co, Bedford row  
 KEMPTON, SAMUEL, Willenhall, Staffs June 18 Baker & Meek, Willenhall  
 LODGE, MARTHA HANNAH, Roughton, Yorks July 10 Dransfield & Hodgkinson, Peckstone  
 LONG, AGNES FLORA CAMBER, Worthing July 12 Fere & Co, Lincoln's Inn fields  
 LYON, HARRIET, Christchurch rd, Streatham Hill July 15 Cochran & Macpherson, Aberdeen  
 MAJOR, CHARLES GEORGE, Bedford hill, Bham July 16 Kennedy & Co, Abchurch in  
 METCALPE, MARIA, Nottingham July 9 Elborne, Nottingham  
 MOFFET, GEORGE, Southport, Wheelwright July 4 Wilmot & Reginald Hodge, Southport  
 NEWTON, GEORGE, Kirkby in Ashfield, Nottingham, Farmer July 9 Alcock, Mansfield  
 NICHOLSON, HENRY, Brighton July 30 Nye & Donne, Brighton  
 OWIN, RICHARD BOOT, Leicester July 20 Wright & Co, Leicester  
 PAULTON, HARRY, Fulham Park gardens July 9 Gibson & Weldon, Chancery in  
 RICHARDS, LEWIS LAWRENCE, Sunderland, Master Mariner July 8 Hedley & Thompson, Sunderland  
 ROBERTS, MARY RUTH, Hillfield av, Hornsey July 18 Reader & Co, Coleman at  
 ROBINSON, JOSEPH, Bradford July 9 Wright & Co, Bradford  
 RUCK, GEORGE THOMAS, Leam, Kent July 10 Morris & Co, Walbrook  
 SANDERS, SUSAN ELIZABETH, Mare-st, Hackney, Pawnbroker July 15 Syrett & Sons, Finsbury pvt  
 SCOTT, SUSAN, Denholme rd, Faddington July 14 Scott, Staple Inn, Holborn  
 SERGEANT, EDWARD ERNEST, Baxhill on Sea August 6 Pead, Baxhill on Sea  
 SHACK, JOHN, Liverpool July 5 Croysdale, Liverpool  
 SHEPHERD, FANNY, and EMILY SHEPHERD, Oxted, Surrey July 9 Dunkerton & Son, Bedford row  
 SLAUGHTER, SIR WILLIAM ADEL (Knight), Kingsgate, Kent July 18 Slaughter & May, Austin friars  
 SPEULES, GEORGE HENRY, Reigate July 9 Morrisons & Nightingale, Reigate  
 STUART, REV EDWARD ALEXANDER, Canterbury, M.A. July 23 Sawbridge & Son, Aldermanbury  
 THOMPSON, JOSEPH WESTWOOD, Church End, Finchley July 7 Denton & Co, Gray's Inn sq  
 TOMKINS, ARTHUR, Audley, Staffs, Farmer June 25 Pedley & Co, Crews  
 TOWNLY, FREDERICK WILLIAM HENRY, Bromley, Kent, Tailor July 5 Barber & Son, St. Swithin's In  
 TURNER, ROSALIE FRANCES, Cathedral mans, Vauxhall Bridge rd July 8 Burton & Co, Surrey st  
 WAKEFIELD, JANE, Sawston, Cambridge July 5 Ellison & Co, Cambridge  
 WIGGIN, NOEL HOLME, Cheltenham July 31 Nalder & Littler, Shepton Mallet  
 WILLIAMS, EDWIN, Berkeley at July 19 Williams & Alder, Laurence Pountney hill  
 WILLIAMS, ANN ROWLAND, and SARAH WILLIAMS, Lowestoft July 4 Francis & Back, Norwich  
 WOOD, MARY ANN, Halifax June 26 Rhodes & Son, Halifax  
 WOOD, WALTER WILLIAM, Portman pl, Mile End, Police Constable June 26 Rhodes & Son, Halifax  
 WRIGHT, JESSIE, Buckland cres, Hampstead July 1 Eland & Co, Trafalgar sq

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